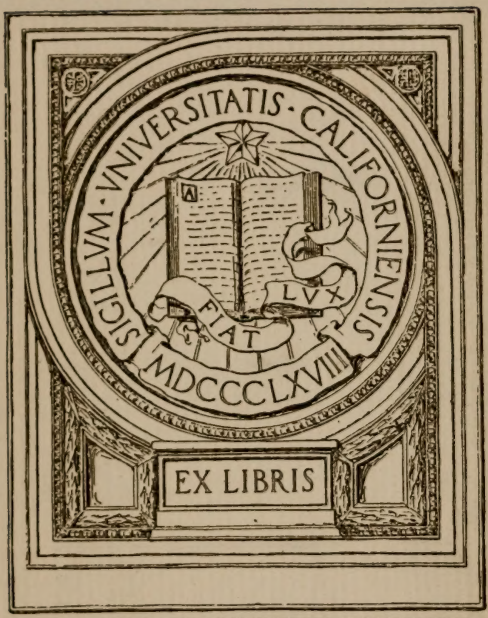
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Edward M. Sait

GOVERNMENT & POLITICS OF FRANCE


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Government and Politics of France

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FRANCE

Medallion by Louis Bottée

Edited by DAVID P. BARROWS and THOMAS H. REED
Government Handbooks

Government and Politics of France

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The security of civilization depends very largely upon the relationships that are maintained between the English-speaking nations and France. To assure a continued understanding between these peoples nothing is more essential than a better insight on the part of each of them into the national institutions of the others. Yet events have moved so rapidly that books on political science which a few years ago may have been helpful are now valuable chiefly from a historical standpoint. It therefore gives the publishers unusual satisfaction to bring out at this time an authoritative and up-to-the-minute account of French political institutions—a book that in a large and very literal way is designed to Apply the World's Knowledge to the World's Needs

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EDITORS' INTRODUCTION

OF all the great powers engaged in the late war, the Republic of France had to sustain the heaviest burden. Her richest territories were occupied by the invader; unparalleled sacrifices were imposed upon the whole people. The government, though formerly much criticized by foreign observers and by Frenchmen themselves, passed through the ordeal triumphantly; and students of government are manifesting a new interest in this parliamentary system, with its highly centralized administrative organization, which has proved so capable of adjusting itself to grave emergencies.

This volume by Professor Sait is the only work in English that describes the structure and practical working of the French government of today; for the textbooks hitherto used in our colleges were published a quarter of a century ago and have not been adequately revised. Much has happened in that quarter of a century. In certain directions French institutions have been profoundly modified, even transformed. For example, the party system, with its annual delegate conventions and its hierarchy of committees, has gradually taken form in the past fifteen or twenty years.

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Professor Sait has made full use of the extensive specialized literature which has appeared recently in France. In doing this he has not confined his attention to the constitutional and legal phases of the subject. A chapter on political development reviews the events of half a century, laying particular emphasis upon those that have affected public opinion most deeply and given direction to party interests. This chapter comes down through the elections of 1919, the elevation of Paul Deschanel to the Presidency, and the appointment of the Millerand cabinet. The national parties, which furnish motive power to the government, but which are all but ignored in French texts, receive adequate treatment; their history, platforms, and organizations are set forth in some detail. Prominence is given also to electoral activities — registration, nominations, campaigning, corrupt practices, the casting of the vote — both under the old arrangements and under the new arrangements set up by the laws of 1913, 1914, and 1919.

The author has sought to express himself simply and directly, without going afield and without obtruding unnecessarily his personal views. Those who wish to understand the actual conditions under which the government of France operates, the functioning of the political and administrative machinery of the present day, will find in this volume full satisfaction.

THE EDITORS

PREFACE

THE author wishes to acknowledge his indebtedness to those who have assisted him, by advice and criticism, in the preparation of this volume; to his former colleagues in the Department of Public Law at Columbia University, Professors Munroe Smith, H. L. McBain, T. R. Powell, and Charles A. Beard, the last now director of the New York Bureau of Municipal Research; and to the editors of the series, President David P. Barrows and Professor T. H. Reed.

EDWARD MCCHESNEY SAIT

ACKNOWLEDGMENTS

FOR the photograph of the medallion of "France," which appears as the frontispiece of this volume, the author and the publishers are under obligations to the American Numismatic Society. Expressions of appreciation are due also to the editors of *La France* magazine, New York City, for the photographs of the Cabinet of Alexandre Millerand, in Chapter IV, and of the bust by Rodin of former Premier Clemenceau, in Chapter IX.

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AUTHOR'S INTRODUCTION

FUNCTIONING OF THE PARLIAMENTARY SYSTEM IN WAR-TIME

IN France, as in other countries, the way lies open to momentous readjustments during the next generation. There can be no question that the war has shaken the whole fabric of society, set men free to inquire into the basis of their creeds, and given play to visions of reconstruction which a few years ago would have seemed academic and beyond the range of the practical business of life. So far, however, the structure and processes of French government show no permanent effects of the war; they remain today substantially what they were in 1914. The changes which are impending will come not so much as the result of the war, as of tendencies already set in motion before the war, held in suspension during its course, and now given a new impetus, an accelerated pace.

The emergency of war did, of course, interrupt the normal functioning of democratic institutions for the time. *Silent enim leges inter arma.* Such a phenomenon should not occasion surprise or lead to the conclusion that the old order has passed away. After all, considering the des-

perate situation of France in the first years of the war, it seems remarkable that the parliamentary system was not more seriously deranged. The war-time modifications may be considered under three heads: (1) The subsidence of party antagonisms; (2) the invasion of the legislative field by the cabinet; and (3) the invasion of the executive field by Parliament.

(1) In the supreme task of saving the nation domestic conflicts were forgotten. Party government gave way to coalition government. Reorganizing his cabinet in the first months of the war, Viviani brought in moderates like Alexandre Ribot and Unified Socialists like Marcel Sembat and Jules Guesde. Aristide Briand, who became premier fourteen months later, not only retained these men, but secured the coöperation of Cochin (Right), de Freycinet (moderate Republican), Bourgeois (right wing of the Radical-Socialist party), and Combes (left wing of the Radical-Socialist party). The obliteration of party lines was further shown by the votes of confidence in both chambers. This by no means foreshadowed the permanent disappearance of party divisions. Indeed, when the naval and military forces of the United States were cast into the balance and victory was assured, the old partisan quarrels began to obtrude themselves once more. Those who believe with Sir Henry Maine that political parties originate in the combative instincts of mankind

and suspend activity when actual warfare gives vent to those instincts would have prophesied as much.

(2) During the first five months of the war the executive governed alone. It issued many decrees of a legislative character which it had no legal right to issue and which it afterwards asked parliament to sanction retroactively. This assumption of authority, though well suited to the circumstances of the time, met with widespread criticism; and in 1915, instead of terminating the regular annual session of parliament, as the constitution allowed, after the expiration of five months, Viviani announced that the government would not exercise its right of prorogation while the war lasted. Henceforth pressing war measures were subject to the vexatious delays of parliamentary procedure. Only with respect to a few specified subjects did the chambers delegate legislative power to the cabinet. Their attitude was so unmistakable that Briand withdrew, before debate had begun, a government bill which would have given the cabinet legislative competence in matters connected with national defense. In January, 1917, however, the Chamber of Deputies adopted a special rule of procedure for emergency war measures, a rule reducing the time allowed for consideration in committee and severely restricting the freedom of debate.

(3) From the beginning of the regular session

of 1915 the chambers showed a persistent desire to meddle in the details of administration. They were particularly bent upon discussing military and diplomatic questions in executive sittings. The government, while professing to welcome parliamentary coöperation, at first refused to accept interpellations on matters which demanded secrecy. Finally, however, it yielded to insistent pressure on this point. Parliament then took another step forward. On June 22, 1916, after executive sittings which had extended over seven days, the Chamber of Deputies declared itself resolved to give, in collaboration with the government, "a more and more vigorous impulse to national defense. It intends to see that . . . the preparation of offensive and defensive measures, industrial as well as military, shall be pushed forward with a care, an activity, and a foresight commensurate with the heroism of the soldiers of the Republic." The Chamber would therefore appoint a body of delegates to exercise effective control over all military services "on the spot" (*sur place*). This proposed system of delegates, reminiscent of a sinister institution of Revolutionary times, was never set up. Instead, the Chamber entrusted the task of control to its permanent committees, which were to report the findings of their agents both to the government and to the Chamber at least once every three months. This was approximately what the Senate had decided upon (July,

1916): "The Senate counts on the government to take, in coöperation with the chambers and the parliamentary grand committees, *whose permanent control is indispensable*, all measures of organization and action that will bring the hour of victory nearer." Thus, through the medium of its committees and of interpellations which were sometimes debated for days, Parliament kept closely in touch with administrative affairs and sometimes imposed particular measures upon the government. Such subordination of the ministers, aside from any question as to whether it is consonant with the principles of the parliamentary system, places upon them a heavy burden. It consumes their time and distracts their attention. No one can conduct a business well if he is constantly being asked to explain and justify his methods. It is to be hoped that this war-time activity of the committees will not serve as a precedent in time of peace. Democratic government has suffered enough already from the incompetence of representative assemblies and from their perverse hostility to the growth of a stable authority in the executive.



THE DEPARTMENTS OF FRANCE

1 *Ain*
2 *Aisne*
3 *Allier*
4 *Alpes-Maritimes*
5 *Ardèche*
6 *Ardennes*
7 *Ariège*
8 *Aube*
9 *Aude*
10 *Aveyron*
11 *Bas Rhin*
12 *Basses Alpes*
13 *Basses Pyrénées*
14 *Belfort (Territory)*
15 *Bouches du Rhône*
16 *Calvados*
17 *Cantal*
18 *Charente*
19 *Charente Inférieure*
20 *Cher*
21 *Corrèze*
22 *Corse (Corsica)*
23 *Côte d'Or*
24 *Côtes du Nord*
25 *Creuse*
26 *Deux Sèvres*
27 *Dordogne*
28 *Doubs*
29 *Drôme*
30 *Eure*
31 *Eure et Loire*
32 *Finistère*
33 *Gard*
34 *Gers*
35 *Gironde*
36 *Hautes Alpes*
37 *Haute-Garonne*
38 *Haute-Loire*
39 *Haute-Marne*
40 *Hautes-Pyrénées*
41 *Haut-Rhin*
42 *Haute-Saône*
43 *Haute-Savoie*
44 *Haute-Vienne*
45 *Hérault*
46 *Ille-et-Vilaine*
47 *Indre*
48 *Indre-et-Loire*
49 *Isère*
50 *Jura*
51 *Landes*
52 *Loire*
53 *Loire-et-Cher*
54 *Loire-Inférieure*
55 *Loiret*
56 *Lot*
57 *Lot-et-Garonne*
58 *Lozère*
59 *Maine-et-Loire*
60 *Manche*
61 *Marne*
62 *Mayenne*
63 *Meurthe-et-Moselle*
64 *Meuse*
65 *Morbihan*
66 *Moselle*
67 *Nièvre*
68 *Nord*
69 *Oise*
70 *Orne*
71 *Pas-de-Calais*
72 *Puy-de-Dôme*
73 *Pyrénées-Orientales*
74 *Rhône*
75 *Saône-et-Loire*
76 *Sarthe*
77 *Savoie*
78 *Seine*
79 *Seine-Inférieure*
80 *Seine-et-Marne*
81 *Seine-et-Oise*
82 *Somme*
83 *Tarn*
84 *Tarn-et-Garonne*
85 *Var*
86 *Vaucluse*
87 *Vendée*
88 *Vienne*
89 *Vosges*
90 *Yonne*

Government and Politics of France

CHAPTER I

THE CONSTITUTION OF 1875

Political disturbances after the French Revolution

IT used to be the fashion to speak of France as a country of revolution and unsettled government; of the French people as volatile and unstable, deficient in political genius. The troubled course of French history during the eight decades which followed the meeting of the States-General in 1789 lent to this view a certain appearance of plausibility. It was a time of perturbation. Nothing seemed to endure. The First Republic, gradually assuming reactionary forms, merged in the Empire of Napoleon; the Bourbon monarchy, restored after Waterloo, gave place in 1830 to a new monarchy which recognized the sovereignty of the people and the tricolor flag of the Revolution; the second republic of 1848 was overthrown by its own president who maintained himself as Emperor until the military disasters of 1870. France had a dozen different constitutions. But too much emphasis has been laid upon this epidemic of revolutions. Such violent com-

motions are by no means peculiar to modern France. Everywhere, though in varying degree, they have attended the evolution of new political systems. Even in England, where the constitution has "slowly broadened down from precedent to precedent," the adjustments of the seventeenth century were reached through civil war and revolution; and in fact French observers of that time, looking with satisfaction upon the stability of their own government, were inclined to doubt the political capacity of Englishmen.

Persistence of fundamental institutions

Nor should it be forgotten that the period of disturbance and experiment, being concerned very largely with questions of external form (republic or monarchy, universal or restricted suffrage), did not interrupt the continuous growth of institutions. The wonderful administrative machinery of today was originated by Bourbon kings and perfected by Napoleon. Through its inherited institutions the Third Republic is firmly rooted in the past; and because of that fact it has confounded dismal prophecies and, in the course of almost half a century, withstood shocks which with weaker foundations it could hardly have survived. Indeed the circumstances attending the establishment of the Republic were, contrary to superficial indications, favorable to its development of permanence and vigor. Unlike the fragile governments which Napoleon and his nephew had swept aside,

it was not based upon logical schemes or attractive political theories. It was based upon expediency, upon compromise, upon a wise acceptance of facts which made an extreme or doctrinaire attitude impracticable.

Third Republic, 1870

The Republic, though not definitely organized until 1875, had come into being on September 4, 1870, immediately after the capture of Louis Napoleon and his army at Sedan. For the next five months a "government of national defense," practically self-constituted, offered desperate resistance to the German invasion. But with the fall of Paris it seemed altogether hopeless to continue the struggle. On February 8, 1871, under the terms of an armistice, a National Assembly was elected by universal manhood suffrage and entrusted with the decision of peace or war. This Assembly not only made peace with Germany, but, going beyond the stated purpose for which it had been convoked, governed France for the next five years and, before dissolving, formulated the existing republican constitution of 1875.

Monarchist majority in National Assembly

The elections had been held to determine, not the future form of government, but whether the war should be continued or ended. No political issue was raised directly. It so happened, however, that Léon Gambetta and other leaders of the Republican party opposed all thought of peace. "War to the bitter end, resistance to the last stage of exhaustion," they urged in an

official circular. And because the masses of the people were tired of war and no longer entertained any hope of success, Republican candidates fared badly. There were 738 members in the Assembly.[1] Although their distribution among the various parties cannot accurately be fixed,[2] it has been estimated that some 30 were Imperialists, 200 Legitimists, 200 Orleanists, and 200 Republicans, the rest of the members having no settled or declared party affiliations. That these figures did not represent the relative strength of parties in the country was demonstrated soon after the conclusion of peace; for in the by-elections of July, 1871, Republicans were chosen to fill 100 out of 111 vacancies. Under the circumstances, seeing that they had a substantial majority in the Assembly and could count on no such good fortune in a fresh election, the monarchists naturally enough ascribed to the assembly constituent powers and wished to prolong its life until arrangements for a restoration of monarchy could be effected. Their difficulty was neatly indicated by Thiers. "There is only one throne," he said, "and there are three claimants for a seat on it." Only two of the three could be considered seriously at the time. The Legitimist claimant was the Count

[1] After the members from Alsace-Lorraine (ceded territory) had withdrawn.

[2] See Léon Jacques, *Les Partis politiques* (1913), pages 90–166.

of Chambord, grandson of Charles X, an honorable, narrow-minded man, who clung obstinately to the doctrine of divine right; the Orleanist claimant was the Count of Paris, grandson of Louis Philippe. Independent action by either party gave little promise of success; positive results could be achieved only through a pooling of interests, a union of parliamentary forces. Bitter as had been the antagonism between the two branches of the royal house, reconciliation now seemed, in the face of such an opportunity, imperative. Since the Count of Chambord was childless and more than fifty years of age, the Orleanists might be satisfied with an agreement designating the Count of Paris as his successor.

Provisional organization of the Republic

Meanwhile the Republic existed as a provisional, working form of government. The National Assembly, soon after its election, had chosen as "head of the executive power of the French Republic" Adolphe Thiers, the venerable statesman who had been prime minister under Louis Philippe and who, because of his services in seeking European intervention and arranging the armistice, enjoyed a remarkable popularity.[1] Six months later, under the Rivet law of August 31, 1871, he received the title of President; and it was provided that he as well as the ministers whom he appointed should be responsible to the Assembly and that all his

[1] He had been elected to the Assembly in 26 departments.

acts should be countersigned by the ministers.[1] Thiers, being a member of the Assembly and responsible to it, did not assume the place of a mere titular executive, notwithstanding the requirement that his acts must be countersigned. Mounting the tribune and advocating a personal policy, he actually absorbed the authority of the ministers; and this situation was not much altered when a subsequent law restricted his right of addressing the Assembly and required interpellations to be addressed to the ministers alone.[2] The change accomplished by the Rivet law, while apparently conceding a more regular status to the Republic, was made under careful reservations. According to the preamble of the law, it was designed as a temporary arrangement "until the establishment of the definitive institutions of the country . . . without in any degree altering the basis of things." Indeed the Rivet law somewhat embarrassed Republican deputies because, in making this constitutional change, the National Assembly had expressly declared that "it has the right to use the constituent power, an essential attribute of the sovereignty with which it is invested." If it

[1] Anderson, *The Constitutions and Other Select Documents Illustrative of the History of France 1789–1907* (1908), page 604.

[2] See law of March 13, 1873, in Anderson, *op. cit.*, page 606. When MacMahon became President, being a soldier and not an orator, he communicated with the assembly by written messages alone. In this way ministerial responsibility, as understood in the parliamentary system, began to take shape.

could set up a president, it could equally well set up a king, and the monarchists, possessing, when united, a decisive majority, had only to reach an agreement as to who should be the king. Their chief obstacle lay in the obstinacy of the Legitimist pretender. He would not sacrifice the white flag of the Old Régime. "France will call me," he announced, "and I will come to her just as I am, with my principles and my flag. On the subject of that flag conditions have been mentioned to which I cannot submit." [1] Since the army and the nation were devoted to the tricolor, — "that beloved flag," as one of the Orleanist princes styled it, — Chambord's attitude placed his adherents in an awkward situation. It also converted Thiers to open acceptance of the Republic.

Thiers abandons monarchists

Thiers was not a Republican when he became "head of the executive power"; the Orleanists regarded him as an indispensable leader of their party; the Left [2] distrusted him. Upon assuming office, it is true, he promised to make a "loyal experiment" with the Republic and entrusted the three most important cabinet posts to Republicans. But he represented himself to Legitimists and Orleanists as favorable to a restoration based upon the fusion of the two par-

[1] Manifesto of July 5, 1871. Hanotaux, *Contemporary France*, Vol. I, page 121.

[2] For the meaning of the terms "Right," "Left," "Center" see Chapter VII.

ties; and on March 10, 1871, he gave a definite undertaking, known as the Bordeaux Compact,[1] that while the work of national reorganization proceeded under a Republican government, nothing would be done to prejudice the interests of the monarchical parties. It was the obvious failure of fusion which led him to advocate a permanent organization of the Republic — "the form of government," he said, "which divides us least." This he did in November, 1872. "The reason which determined me, who am an old partisan of the monarchy," he explained later,[2] "is that today, for you, for me, practically, the monarchy is absolutely impossible." But Legitimists and Orleanists did not believe it impossible; they still entertained vague hopes; and on May 23, 1873, after the personnel of the cabinet had been modified in a Republican direction and a bill had been introduced providing for permanent Republican institutions,[3] they carried a vote of want of confidence. Next day Thiers resigned.

Failure of monarchist schemes

The defection of Thiers, the slender majority of 13 (including a dozen Imperialists) which had been mustered to overthrow him, and the impressive success of the Left in by-elections warned monarchist leaders that their opportunity was slipping away, that fusion must be consummated

[1] The assembly sat at Bordeaux for a few weeks, removing later to Versailles.

[2] Hanotaux, *op. cit.*, Vol. I, page 635.

[3] Anderson, *op. cit.*, page 622.

forthwith or not at all. They chose as the new President, Marshal MacMahon, a distinguished soldier who had served Charles X, Louis Philippe, and Louis Napoleon with equal fidelity and who, though actively identified with no party, was known to sympathize with the Legitimist cause. An Orleanist, de Broglie, became prime minister. He proceeded to discipline Republican newspapers and to "purify" the civil service. Final preparations were made for the restoration. First the conflicting claims of the two pretenders were adjusted. The Count of Paris, visiting Chambord at Frohsdorf, recognized him as the legitimate king and promised that no member of the Orleans family would stand in his way. There still remained the question of the flag. But in October that too seemed to have been adjusted. Chambord was represented, though incorrectly, as being ready to make a compromise with the assembly; and the Royalists, knowing that some such concession was essential to their plans, believed or pretended to believe that the impossible had actually happened. Everything was ready, even to the fleur-de-lis carpet for the royal carriage. At this critical moment, on October 27, the pretender's sublime conceit and mistaken sense of honor interposed to wreck the whole scheme. As a phrase of the time expressed it, he threw his crown out of the window. He declared that he could not accept conditions and become "the legitimist king of the Revolution. . . .

My person is nothing: my principle is everything. . . . I am the necessary pilot, the only one capable of guiding the ship to port, because I have the mission and authority for that." [1]

The Septennate

Fusion had failed. It now remained to save what could be saved for the future. To the Royalists the presidency of MacMahon was, as Broglie said, "the clay rampart" which might protect them from the rising flood of radicalism. On November 19, therefore, the presidential office was entrusted to him for a period of seven years, the Septennate, and provision was made for the appointment of a committee of 30 members which should undertake the drafting of a new constitution. The immediate voting of the Septennate and the postponement of other constitutional arrangements suited the Orleanists especially, for they cherished the pious hope that Chambord's death, in the interval, might leave the way clear for the Count of Paris; and it suited the Legitimists as well, they being equally anxious to reserve the future. But the policy of postponement had its limitations. Both parties must eventually face the alternative of accepting the Republic or appealing to the people for a decision. The moderate Right, regarding dissolution and Bonapartism as the two evils to be chiefly feared, gradually came to acquiesce in the establishment of a "conservative republic."

[1] Anderson, *op. cit.*, pages 627–630.

Adoption of the Constitution of 1875

The committee of thirty, after long delay, reported a constitutional measure which did not contemplate the Republic as a permanent system, but which simply organized the Septennate (a bicameral legislature taking the place of the assembly) and provided that at the end of MacMahon's term the chambers should unite and "decide upon the measures to be taken." [1] To the first article an amendment was offered, the famous "Wallon amendment" of January 30, 1875.[2] M. Wallon, who knew that the Assembly was not yet prepared to endorse the principle of a Republic, resorted to strategy. His amendment, looking beyond Marshal MacMahon, fixed the method of electing the President and the term of office. Every one understood what it implied; Wallon was accused of proclaiming the Republic. "Gentlemen," he replied, "I proclaim nothing. I am simply taking things as they are. . . . I do not ask you to make it final. What is final? But do not call it provisional. Make a government which has within it the germs of life and preservation." [3] Wallon has been called the "father of the constitution"; for although his amendment carried by only one vote (353 to 352), it made a breach in the resistance of the moderate Royalists and enabled him to secure further modifications. The bill finally

[1] Anderson, *op. cit.*, page 632.
[2] Anderson, *op. cit.*, page 633.
[3] Hanotaux, *op. cit.*, Vol. III, page 154.

passed, on February 25, by a majority which had grown to 171. It was not in any sense a comprehensive measure. The situation within the Assembly was so uncertain, the necessity of reducing controversy and friction was so imperative, that the bill did nothing more than formulate the essential features of executive and legislative organization. Afterwards, omissions had to be supplied. Instead of amending the original law, however, the Assembly enacted, on July 16, a supplementary law regulating the relations of the public powers, *i.e.* the organs of government. These two laws, along with the law of February 24 which deals exclusively with the Senate, form the Constitution of 1875.

These three "constitutional laws," as they are called, deserve careful examination. For reasons which will soon appear they differ radically from such a fundamental instrument as the Constitution of the United States, which fixes the respective spheres of central and local government and depends, for its exact meaning, upon elaborate judicial interpretation. No one can hope to understand this difference or to realize the peculiar characteristics of the French system without some knowledge of the texts themselves.[1] But it may be serviceable to include here an abstract of their provisions.

[1] For the text of the constitutional laws see: Anderson, *op. cit.*; Currier, *Constitutional and Organic Laws of France* in the *Annals of the American Academy*, March, 1893; Duguit

Constitutional law of February 25

The law of February 25 has nine articles. It lodges the legislative power in a Chamber of Deputies which shall be elected by universal suffrage and a Senate whose composition and powers shall be regulated by a special law (Art. 1). It prescribes the method of choosing the President, the two chambers meeting together for that purpose (Art. 2), briefly enumerates his powers, and requires that his every act must be countersigned by a minister (Art. 3). The ministers are responsible to the chambers, the President is responsible only in case of high treason (Art. 6). When the presidential office becomes vacant through death or resignation, the chambers shall proceed immediately to the choice of a new President, the council of ministers meanwhile exercising the executive power (Art. 7). The President may, with the consent of the Senate, dissolve the Chamber of Deputies (Art. 5). To amend the constitution the chambers, having previously decided in favor of revision, shall meet in National Assembly; but during the term of Marshal MacMahon revision can take place only upon his initiative (Art. 8). The law also regulates the appointment and dismissal of councilors of state [1] (Art. 4) and fixes the seat of government at Versailles (Art 9).

et Monier, *Les Constitutions et les principales lois politiques de la France depuis 1789* (1898; new edition, 1915); and Dodd, *Modern Constitutions* (1909), Vol. I.

[1] See Chapters IV and XI.

Constitutional law of February 24

The law of February 24[1] has eleven articles. It describes how the 300 Senators shall be chosen and the term for which they shall sit (Arts. 1–7 and 10). It gives the Senate a legislative authority coördinate with that of the Chamber of Deputies except in the case of money bills (Art. 8) and provides that the Senate may be constituted as a high court of justice to try the President, or the ministers, or persons accused of attacks upon the security of the state (Art. 9).

Constitutional law of July 16

The law of July 16 has 14 articles. It enters into some detail regarding the sessions of the chambers and the right of the President to adjourn them (Arts. 1, 2, 4, 5). It establishes the usual parliamentary privileges of freedom of speech and freedom from arrest, makes the chambers judge of the eligibility and election of their own members, and requires them to elect their bureaux of officials annually (Arts. 10–11, 13–14). The President may communicate with the chambers by means of messages; and the ministers, who have free access to both chambers, may speak at any time and, in the discussion of any bill, be represented by commissioners (Art. 6). The President is entrusted with a suspensive veto; that is, with the right of requiring the chambers to reconsider any bill which they have passed (Art. 7). Without the consent of the chambers he cannot declare war

[1] Promulgated, in accordance with Article 11, after the law of Feb. 25.

or ratify treaties which touch upon certain enumerated subjects (Arts. 8–9). Precautions are taken to ensure the prompt meeting of the chambers as the National Assembly to elect a new President (Art. 3). Further details are given regarding the procedure in the impeachment of President or ministers and in the trial of persons accused of making attacks upon the safety of the state (Art. 12).

Peculiarities of the constitution

A cursory reading of the constitution reveals its unsystematic, fragmentary character. The arrangement is disorderly; the area covered is incomplete. It includes some matters which are of quite minor importance; providing, for example, that the chambers shall meet in public except when, under their own rules, they decide to meet in secret and that they shall elect anew each year their presiding officers. It ignores, on the other hand, some matters which Americans might consider essential to any constitutional scheme. There is not a word about the judicial power, not a word about civil liberty, the private rights and immunities of the individual. "These are regrettable lacunæ," says Raymond Poincaré.[1] They are all the more singular because of the vogue which the Rights of Man and the doctrine of the separation of powers had in revolutionary days. The method of electing the Chamber of Deputies, aside from the fact that it must be chosen by universal suffrage, is

[1] *How France is Governed* (1913), page 162.

not prescribed, nor is the length of its mandate; the duration of an existing chamber may be and has been extended by statute. In fact, without pursuing the subject further, it is obvious that the constitution, while attempting to do no more than indicate the bare framework of government, does not by any means occupy the whole of its limited field.

Constitution based on compromise

The explanation of the peculiarities of the constitution has already been suggested. The National Assembly, elected to make peace, undertook to make a constitution. Under the pressure of circumstances, with faltering steps, it created first the Presidency, then the Septennate; and, when intending merely to organize the Septennate, it was persuaded to sanction a continuing Republican system. The majority, happening to be royalist because the Royalists had favored peace, wished to establish a monarchy and actually did establish a republic. They had been compelled to accept compromise, to agree upon a solution which would leave the future completely untrammeled and "let each man preserve his faith and his hopes." [1] The moderate Royalists and the moderate Republicans had effected a combination, the former abandoning their opposition to the Republic, the latter supporting a method of constitutional amendment which would facilitate a subsequent transition

[1] Casimir de Ventavon in the National Assembly, Hanotaux, *op. cit.*, Vol. III, page 135.

to monarchy. The constitution, therefore, resembles a treaty, a treaty of practical adjustment at the end of an inconclusive conflict; and the matters dealt with are those which were most discussed at the time and which it seemed most desirable to render plain.[1] The constitution did not pretend to speak the final word, to secure the triumph of one party or the other. There lay its greatest merit; for it is idle to suppose that the terms of such a compact could arrest the social and economic forces which ultimately shape a nation's destinies.

Importance of precedent in the new system

Indeed the constitution of a country does not consist merely in a written instrument presumed to be binding on the government which operates under it. Great Britain possesses no such instrument; the written constitution of the United States is, as Mr. Wilson has said,[2] "only the sap-center of a system of government vastly larger than the stock from which it has branched." A constitution may broadly be defined as the sum of laws and practices which regulate the fundamental concerns of government. Nowadays we often speak of this or that political practice as being part of the "unwritten constitution"; and because we have found that law may be overlaid by custom and made to accom-

[1] Esmein, *Éléments de droit constitutionnel* (1914), page 628; Saleilles, "*The Development of the Present Constitution of France*," *Annals of the American Academy*, July, 1895, page 12.

[2] *Congressional Government* (1885), page 7.

plish ends quite contrary to its intention, written constitutions no longer exercise, as they did in the eighteenth century, a magic spell. That the constitutional laws of 1875 embody only a part of the French constitution, considered in the broad sense, may be gathered from the fact that such important subjects as justice, administration, and local government lie altogether outside their purview. The larger part must be sought in the legislation of an earlier as well as of a later time and in a mass of precedents; for notwithstanding the rather tumultuous course of political development since the Revolution, it is an accepted principle of French public law that the legislative acts of a *de facto* government, however irregular its origin and however short its duration, remain in force until they have been formally repealed. French publicists constantly support their contentions by precedents drawn from an earlier period, even from the Old Régime. Thus Duguit maintains [1] that, in spite of the silence of the constitutional laws, revenue and supply must be voted annually, the principle of annual taxes having been consecrated in the Constitution of 1848 and the principle of annual supply in the Constitution of 1791. If government is an organic thing constantly changing in response to its environment, then the most vigorous government, like the most vigorous plant or animal, is the one that can most easily adjust

[1] *Traité de droit constitutionnel* (1911), Vol. II, page 381.

itself to varying conditions. The French government, because of the freedom with which it develops outside the domain of written law, has shown itself capable of a healthy, spontaneous growth. "It is undeniable," said an acute critic,[1] "that by placing the French constitution in the midst of the organic elements of the country and depriving it of the character of a written constitution, which the least revolution has proved sufficient to overthrow, the convention of 1875 has assured, contrary, it is true, to its aims and secret wishes, the existence of the organization which it has founded. It has restored, in fact, the French constitution to the domain of historical evolution. This alone, in view of the inextricable complications which are constantly occurring, can place the political organization of the country upon a solid basis capable of resisting all internal shocks."

Is the Declaration of Rights still effective?

One striking illustration may be given of the way in which the constitution maintains its contact with the past. The constitutional laws of 1875 contain no bill of rights, create no sphere of civil liberty which the government must respect; and in this they differ from all preceding constitutions, even those of the Napoleonic period. But such an omission does not necessarily imply that the Declaration of the Rights of Man, which was placed at the head of the Constitution of 1791, has lost all binding

[1] Saleilles, *op. cit.*, page 15.

force. It survives in parliamentary debates and in political arguments very much as Magna Carta survives in England; and when, in the discussion of some controversial measure, more practical grounds of criticism fail, its opponents are quite likely to urge that it is unconstitutional as violating the principle of liberty or the principle of equality or some other principle of the Declaration. Do laws which restrict the freedom of contract between employer and employee violate the principle of liberty? Is the principle of equality violated by a law which forbids the members of unauthorized religious orders to teach in the schools? Professor Duguit goes so far as to maintain that the Declaration, formulating the contract of a new society set up by the Revolution, has a permanent character and is superior to constitutions themselves.[1] It "has preserved, even in our time, all its positive legal force. We believe that, if today the legislator made a law violating one of the principles formulated in the Declaration of Rights of 1789, that law would be unconstitutional. We even believe that the Declaration of Rights of 1789 is binding not only upon the ordinary lawmaker, but also upon the constituent lawmaker." In other words a constitutional amendment, though adopted in strict conformity with the prescribed procedure, would not be valid if it encroached upon the provisions of the Declaration. This is, of course,

[1] *Op. cit.*, Vol. II, page 13.

an extreme position shared by few authoritative writers. Esmein maintains that the Declaration has no legal force today, that it never possessed more than a dogmatic value, and that "the legal situation is very much the same whether it exists or does not exist." [1]

No judicial control in France

But even if Professor Duguit is right, it must be held in mind that the term "unconstitutional" does not mean to a Frenchman what it means to an American. In the United States an unconstitutional act is one which, conflicting with the express or implied provisions of the constitution, the courts will not recognize as law. In France, on the other hand, the obstructive tactics of the courts before 1789 irritated the friends of reform and led the National Assembly, in a law of 1790 and in the Constitution of 1791, to prohibit their interfering directly or indirectly with the exercise of legislative power. These prohibitions still prevail as a part of French public law. The highest court of the land has on more than one occasion refused to inquire into the constitutionality of a law. The leading case is that of the proprietors and publishers of the newspaper *National* who were tried without jury under a law of 1830 and who appealed on the ground that their constitutional rights, as fixed in the Charter of 1830, had been denied. The Court of Cassation held that a law "deliberated and promulgated according to the constitutional forms

[1] *Op. cit.*, page 564.

prescribed by the Charter" could not be attacked as unconstitutional.[1] There has been until recently no disposition to criticize this decision or to invest the courts with control over the discretion of the legislature. When in the Constitutions of 1799 and 1852 machinery was devised to prevent legislative encroachments, the necessary powers were conferred not upon the courts, but upon the Senate, this body becoming, under both the Napoleons, little more than a docile instrument.

Why judicial control is opposed

The question of judicial control is a question of expediency. All political institutions must ultimately be judged, as Bismarck contended, not by the test of theory, but by the test of practical results. In France, according to the dominant opinion, the American system would be unnecessary, if not anomalous, because in the first place the government is unitary — there is no balance to maintain between central and local authorities; and because in the second place there are no limitations upon Parliament in favor of personal and property rights. If, notwithstanding these facts, the courts were permitted to determine the validity of statutes, they might very well attribute constitutional force to the vague principles of the Declaration of Rights and thereby exert a vexatious restraint upon Parliament; in fact those who propose to invest them

[1] Sirey, *Recueil* (1833), Vol. I, page 357. See also Duguit, *op. cit.*, Vol. I, page 158.

with this power propose at the same time to include in the constitution guarantees of civil liberty.[1] Such are the practical considerations. But French jurists, who prefer to deal with abstract principles and who are therefore not always safe guides to an understanding of political questions, do not ask how judicial control would work. They argue instead that it would violate the doctrine of the separation of powers as well as the doctrine that law is an expression of the sovereign will. Those who favor judicial control aptly answer that law is nothing more than the expression of Parliament's will and that the separation of powers would not be violated by a court which refused to recognize an unconstitutional act as law; for if the judicial power must be bound by an unconstitutional law, then it is inferior to the legislative power and the separation of powers is violated.

Tendency towards its establishment

There is a considerable, and apparently a growing, body of opinion favorable to the establishment of judicial control. Two conservative parties, the Liberal Action and the Progressists, have included it in their platforms.[2] A number of eminent publicists, such as Maurice Hauriou and Gaston Jèze, have expressed themselves strongly in its favor.[3] Some contend that the

[1] Desfougères, *Le Contrôle judiciaire de la constitutionnalité des lois* (1913), page 116.

[2] Jacques, *op. cit.*, pages 486, 489.

[3] Garner, *Political Science Review*, Vol. IX, page 661.

courts should, as in the United States, assert the prerogative without formal authorization;[1] others urge the necessity of constitutional amendments.[2] The most interesting point of view is developed by Professor Duguit who formerly believed "that there would be no advantage in importing the American system into France and that it might even provoke conflicts, create a new cause of agitation and division."[3] According to his later opinion, continental countries are tending to accept the doctrine of judicial control, this appearing in the attitude of German publicists and in the actual assumption of power by the courts of Norway (1904) and Roumania (1912). "In the near future," he says, "French jurisprudence will be led by the force of things to find the same solution."[4] The Council of State (the highest administrative court)[5] has since 1907 assumed the right to determine the constitutionality of ordinances which have been issued by virtue of a delegation of legislative power to the executive.[6] Now if there is delegation of legislative power, such ordinances must

[1] For instance Jèze in *Revue générale d'administration*, 1895, Vol. II, page 411.

[2] Such as offered in 1894, 1903, 1904, 1907, 1909. Desfougères, *op. cit.*, pages 127 *et seq.*

[3] *Op. cit.*, Vol. II, page 159.

[4] *Les Transformations du droit public* (1913), page 102.

[5] See Chapter XI.

[6] *Revue du droit public*, Vol. XXV, page 51; *Political Science Review*, Vol. IX, page 649.

logically be regarded as acts of Parliament, because the term "delegation" implies a transfer of competence or it has no meaning at all. Will not the Council of State as a next step be compelled to receive complaints against the validity of formal laws? "The distance is short and will be traveled easily."

Public opinion as a safeguard

This anxiety to restrict the competence of Parliament — or, in other words, the free play of public opinion expressing itself through Parliament — is regarded with suspicion by the parties on the Left. To them it seems to rest partly upon the dissatisfaction of conservative and clerical interests with the prevailing sentiments of the electorate and partly upon the preoccupation of the writers with theories rather than facts. Theorists are dissatisfied with the imperfections of the existing constitution from the standpoint of logic and political philosophy, forgetting that its practical character has given it a permanence which the philosophical constitutions of the Abbé Siéyès did not achieve. If it could be shown that Parliament had abused its unrestricted power, that it had shown little respect for the rights of property and person, the argument for judicial control would at least have a plausible basis. But Parliament has manifested no such inclinations. Public opinion is alert in France and constitutes the best guarantee a people can have. It is so in England; as Esmein observes,[1] there is

[1] *Op. cit.*, page 564.

no country in the world where private rights are better assured than in England and where the freedom of the legislature is at the same time more absolute. And even if the agitation for judicial control should succeed, public opinion could assert itself against the courts by securing amendments to the constitutional laws.

Method of amending the constitution

The process of amendment, as described in Article 8 of the law of February 25, is exceedingly simple.[1] "The chambers shall have the right, by separate resolutions, taken in each by an absolute majority of votes, either upon their own initiative or upon the request of the President of the Republic, to declare a revision of the constitutional laws necessary. After each of the two chambers shall have come to this decision, they shall meet together in National Assembly to proceed with the revision. The acts effecting revision of the constitutional laws, in whole or in part, shall be passed by an absolute majority of the members composing the National Assembly." By an amendment of 1884 "the Republican form of government shall not be made the subject of a proposed revision." The machinery, therefore, is set in motion by the two chambers, which adopt resolutions upon the initiative either of private members or of the cabinet (which acts in the name of the President), these resolutions being theoretically distinct and actually identical.

[1] See Jean Auffray, *Étude sur la facilité de la révision de notre constitution* (1908).

The National Assembly[1] then meets of full right. Although similar in name and composition to the National Assembly which elects the President, it is legally a different body. Nor can it be regarded simply as a combination of the two chambers. It is an entirely new assembly consisting of all the senators and all the deputies; and hence the President cannot, by an adjournment of both chambers or by a dissolution of the Chamber of Deputies, prevent or postpone its meeting.[2] Under a law of 1879 it is required to sit at Versailles, the purpose being not only to secure a hall of adequate size, but also to avoid the possible dangers of Paris. Decisions must be taken "by an absolute majority of the members composing the National Assembly," which means, according to textbooks and the interpretation adopted in 1884 by the assembly itself, half plus one of the legal number of members without deducting vacancies caused by resignation, death, or otherwise.[3]

National Assembly without limitations

The powers of the National Assembly, when once it has convened, are not made altogether plain by the constitution. Is it subject to any limitations? In 1884 it apparently imposed upon itself a limitation by providing that the Republican form of government could not be made the subject of a proposed amendment. Esmein

[1] Popularly known as the "Congress."

[2] Duguit, *Traité de droit constitutionnel*, Vol. II, page 527.

[3] *Id.*, page 528; Esmein, *op. cit.*, page 1072.

holds that this is binding upon the National Assembly;[1] so does Raymond Poincaré. "Any revision which would have as its object the substitution of a monarchical system for the Republic," says the latter,[2] "would be illegal and revolutionary. The head of the state would have the right, as it would be his duty, to refuse to promulgate such a law if voted." It is manifest, however, that the President can legally exercise no discretion in promulgating constitutional amendments and that he cannot even use the suspensive veto which he possesses in the case of ordinary legislation.[3] The sound view seems to be that what the National Assembly has enacted it may at a later time repeal;[4] and this view was taken by the prime minister, Jules Ferry, when he proposed the amendment in question. "We would not be worthy of presiding over the government of this great country," he said, "or of enjoying the confidence of Parliament, if we labored under the illusion that a clause in a constitution can make that constitution eternal. What we ask of you is to declare that the Republic is the definitive form of government." A further question arises as to

[1] *Op. cit.*, page 1074.

[2] *Op. cit.*, page 163.

[3] Esmein, *op. cit.*, page 1081; Duguit, *op. cit.*, Vol. II, page 532.

[4] Duguit, *op. cit.*, Vol. II, page 530; Burgess, *Political Science and Comparative Constitutional Law* (1890), Vol. I, page 172.

whether the National Assembly is limited by the specific proposals contained in the resolutions of the chambers. If the chambers have proposed the amendment of a particular article of the constitution, perhaps in a particular sense, can the National Assembly proceed to amend other articles or to revise the whole constitution? "We do not hesitate to reply," says Professor Duguit,[1] "that the assembly is not at all bound by the resolutions of the chambers." If it is constituent, it remains so even when the resolutions cover only specific points. Practice sustains this view; for in 1884, going beyond the scope of the resolutions, the assembly provided that "members of families which have reigned in France are ineligible to the Presidency." The argument on the other side can hardly be taken seriously. It maintains that since the consent of the chambers is necessary for a meeting of the National Assembly, that consent may be given conditionally, that is, for certain limited purposes alone.[2] But this deduction, besides finding no support in precedent or in the language of the constitution, is logically unsound.

Changes in the constitution since 1875

The constitution has been amended by the National Assembly on two occasions: June 19, 1879, when Article 9 of the Constitutional Law of February 25, which fixed the seat of the executive power and of the two chambers at Ver-

[1] *Op. cit.*, Vol. II, page 531.

[2] Esmein, *op. cit.*, page 1074.

sailles, was repealed; and August 13, 1884, when four amendments were adopted. The first provided that after a dissolution of the Chamber of Deputies a new election should be held within two months; the second, that the Republican form of government could not be made the subject of a proposed revision and that the members of families which had reigned in France should be ineligible to the presidency; the third, that the first seven articles of the law of February 24 on the organization of the Senate should no longer have a constitutional character; and the fourth repealed Paragraph 3, Article 1, of the law of July 16 which had required public prayers on the Sunday after the opening of the parliamentary session.

CHAPTER II

THE PRESIDENT OF THE REPUBLIC

THE French President occupies the position of a constitutional king. He is a titular executive, nominally endowed with large powers and really restrained from employing them by the action of a responsible parliamentary cabinet. That his tenure is elective and not hereditary, temporary and not permanent, does not essentially change his legal status. He is, as Professor Duguit describes him, "a constitutional king for seven years." [1] If reëlected for successive terms, he might hold office longer than Napoleon or Louis XVIII or any post-revolutionary ruler of France. Naturally he does not enjoy the social prestige of an hereditary king; but if he possesses political experience, sound judgment, and force of character, he can exercise an important influence upon his ministers and upon public opinion.[2] He lives in almost regal state. Parliament appropriates each year $240,000, half for salary and half for household and traveling expenses. The nation has placed at his disposal two official residences: the Palace of the Élysée

The President is like a constitutional king

[1] *Traité de droit constitutionnel*, Vol. I, page 406.

[2] See Munroe Smith in *Review of Reviews* (American), Vol. XXXIII (1906), page 165.

which dates from the beginning of the eighteenth century and the Château of Rambouillet which has a splendid park and forest, the scene of many official hunting parties. In the Élysée the President entertains on a lavish scale, giving dinners and receptions, garden parties and dances. He presides on the occasion of any national ceremony. The elaborate civil and military honors which are accorded him as he travels through the country contribute not a little to the dignity of his position.

Election by National Assembly

The President is elected by the Senate and Chamber of Deputies united in National Assembly and sitting at Versailles.[1] Normally the election takes place one month before the expiration of a presidential term or, in case the government has failed in its duty of convoking the Assembly, fifteen days before, the chambers then meeting of full right and without a formal summons.[2] But, as a matter of fact, only four Presidents have served a full term: Jules Grévy (first term 1879–1886); Émile Loubet (1899–1906); Armand Fallières (1906–1913); and Raymond Poincaré (1913–1920). Five times the National Assembly has been convoked to fill a vacancy. Three Presidents resigned: MacMahon in 1879, Grévy in 1887 (second term), and Casimir-Périer in 1895. Two died in office: Sadi Carnot in 1894 and Félix Faure in 1899. The constitution expressly con-

[1] Constitutional law of Feb. 25, Art. 2; and law of 1879.

[2] Constitutional law of July 16, Art. 3; Duguit, *op. cit.*, Vol. II, page 419.



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templates vacancies occurring because of death or resignation and provides, by way of precaution, for vacancies which may occur "for any other reason." [1] It does not provide, as in the United States, that another officer shall complete the unexpired term; there is no vice president. Since the method of election is so simple and expeditious, the constitution merely requires the National Assembly to convene at once and proceed to the election of a new President.[2] During this brief interregnum, a period of two or three days at the most, the cabinet is invested with the executive power.[3] Curiously no provision has been made for cases in which the President, through severe illness or absence from the country or other cause, is unable to discharge the duties of his office. Nothing in the laws or the constitution prevents the President from traveling abroad; and the precedent established by Faure's visit to Russia in 1897 has been followed by all his successors. The absence of the President might, in time of crisis, prove embarrassing. Many important acts of state require his signature. President Poincaré and his prime minister, René Viviani, found themselves under the necessity of

[1] Constitutional laws of July 16, Art. 3, and Feb. 25, Art. 7.

[2] Constitutional laws of Feb. 25, Art. 7, and July 16, Art. 3. If the Chamber of Deputies is dissolved at the time, new elections shall be held forthwith. Constitutional law of July 16, Art. 3.

[3] Constitutional law of Feb. 25, Art. 7.

returning to France somewhat precipitately in the summer of 1914.

Influence of the caucus

Any Frenchman who enjoys full civil and political rights [1] and who does not belong to the royal or imperial houses [2] may be elected to the presidency. The National Assembly exercises a complete freedom of choice; it is limited by no formal nominating machinery. But nevertheless, by a practice which will recall to Americans the Congressional caucus of the early nineteenth century, the Republican parties have always attempted to unite upon a candidate.[3] In 1879, when MacMahon had resigned and the future of the Republic still seemed uncertain, Gambetta urged the various groups of the Left to endorse Grévy as the most worthy and the most Republican. This they did, first in separate meetings, then in a general caucus which included the Republicans of both Senate and Chamber. Two hours later Grévy became President. Only on three occasions since that time, in 1899, 1906, and 1920,[4] has the caucus succeeded in imposing its candidate upon the National Assembly. In 1887,

[1] Duguit, *op. cit.*, Vol. II, page 418.

[2] Constitutional amendment, 1884.

[3] Leyret, *Le Président de la République* (1913), page 209 *et seq.*

[4] The caucus of 1920, attended not by the parties of the Left alone, but by almost ninety per cent of all the deputies and senators, gave Deschanel 408 votes, Clémenceau 389, Poincaré 16, Jonnart 4, Bourgeois 3, Foch 1. Clémenceau then withdrew, asking his friends to support Poincaré.

for instance, although it met three times on the very day of the election and nominated Jules Ferry on each occasion, the radicals finally refused to be bound by the decision. In the caucus of 1913 the Radical-Socialists put forward M. Pams, the minister of agriculture, who received on the third ballot 323 votes as against 309 for Raymond Poincaré, the prime minister. But the latter, declaring that the issue between himself and Pams was personal rather than political, refused to withdraw and, supported in the National Assembly by the Catholic Right, succeeded in bearing off the prize.[1] There is, of course, no presidential campaign in the American sense. A candidate who tried to force the hands of the National Assembly by making a popular appeal would damage his chances irreparably; France has good reason to suspect the arts of the demagogue. Yet quietly and unobtrusively something may be accomplished. The aspirant may show himself frequently at public functions. Traveling in the provinces, he may praise the civic enterprise of a community, subscribe to the funds of the local hospital, kiss a few babies, and make himself generally agreeable.[2] If he delivers speeches, they must be innocent and colorless, divorced as

No election campaign

[1] Great pressure was brought upon Poincaré to secure the withdrawal of his candidacy. See Gaston Jèze, "*La Présidence de la République*," *Revue du droit public*, Vol. XXX (1913), note pages 119–122.

[2] André Tridon, *Review of Reviews* (American), Vol. XLVI (1912), page 693.

far as possible from current political controversies; for the presidency, like the constitutional monarchy, is supposed to be above politics.

Procedure in National Assembly

Under the constitution the president of the Senate acts as president of the National Assembly;[1] and this must be so even when, as in the case of Loubet (1899) and Fallières (1906), he happens to be the most prominent candidate. The National Assembly which elects the President, however much it may resemble the National Assembly which amends the constitution, is regarded as a distinct body. It is an electoral college, regulated as such by a decree of 1852.[2] No debate is permitted. In 1894 when a member proposed a constitutional amendment to abolish the presidency, he was declared out of order; indeed guards have sometimes been stationed at the approaches to the tribune. There can be no nominating speeches. The members vote in silence as their names are called and continue to vote until some one candidate has received the "absolute majority" required by the constitution. This absolute majority is different from the one required for constitutional amendments; it is reckoned not on the basis of the legal membership, but on the basis of votes actually cast for candidates (blank or void ballots not being counted). Except in 1886, 1895, and 1913, no second ballot

[1] Constitutional law of July 16, Art. 11.

[2] The decree of February 2, 1852, still forms the basis of French electoral law. Duguit, *op. cit.*, Vol. II, page 417.

has been necessary.[1] The President-elect is inaugurated at the Élysée where his predecessor, surrounded by the cabinet ministers and the members of Parliament, transmits to him the powers of office. It is a dignified and impressive ceremony. If the executive powers have been exercised by the cabinet because of a vacancy in the presidential office, the inauguration takes place at Versailles immediately after the election, the cabinet and the bureau of each chamber being present. According to the constitution the President may be reëlected an indefinite number of times. But as in the United States, where a third term has never been accorded, custom has intervened and, resting apparently upon popular prejudice, limited the President to a single term. The reëlection of Jules Grévy in 1886 — he then having reached the advanced age of 79 — proved unfortunate; for when political scandals occurred in the Élysée and the President refused to believe in the guilt of his son-in-law, Parliament felt obliged to demand his resignation. The next President, Carnot, was assassinated (1894); Casimir-Périer, finding the limitations of his position irksome, resigned after six months (1895); Faure died in office (1899). Thus in a negative way and by reason of accidental circumstances a single-term doctrine began to develop; and when Presi-

Single-term doctrine

[1] In 1913 the vote on the first ballot was: Poincaré 429, Pams 327, Vaillant 63, Deschanel 18, Ribot 16, scattering 13; on the second ballot: Poincaré 483, Pams 296, Vaillant 69.

dents Loubet and Fallières successively announced that they would not accept a second term,[1] a precedent was created which may prove no less effective than a constitutional amendment.

Ablest politicians not chosen

What kind of men are chosen as Presidents of the Republic? Critics complain that the most prominent figures in political life — the aggressive party leaders, the Gambettas and Ferrys and Waldeck-Rousseaus — have been overlooked; that men of mediocre attainments, lacking in character and personal force, have been preferred. After the election Frenchmen are supposed to ask who this obscure man is. Clemenceau, according to his own confession, wished to make Carnot President because of his "perfect insignificance." All of this has a familiar sound to Americans who remember how frequently "available" men and "dark horses" have made their way to the White House. But supposing the criticism to be equally true of France and of the United States, its significance in the two countries would nevertheless be quite different; for the French President does not control the executive powers of the government; the ministers do. A vigorous and partisan President would be as much out of place at the Élysée as Sir Edward Carson or Ramsay Macdonald would be at Buckingham Palace. A titular executive cannot be an active party leader; he should have the reputation of giving sound

[1] Poincaré is reported to have made a similar announcement towards the end of his term.

and impartial advice to which ministers of any political faith could listen with respect and profit.

But extensive political experience required

If the National Assembly has not always acted with perfect wisdom, it has at least been animated by two fundamental considerations: first that the President's loyalty to the doctrine of legislative supremacy should be beyond question, and second that his political experience should have been wide enough to give him some influence over the ministers. All the Presidents since MacMahon have had a parliamentary career which, if it did not bring them quite to the front rank among party leaders, at least demonstrated their fitness for high office. Jules Grévy served as president of the National Assembly and as president of the Chamber of Deputies; Sadi Carnot, grandson of the famous "organizer of victory," as undersecretary, minister of public works, and minister of finance; Casimir-Périer as undersecretary, president of the Chamber, and prime minister; Félix Faure as undersecretary in three cabinets, vice president of the Chamber, and minister of marine; Émile Loubet as minister of public works, minister of the interior, prime minister, and president of the Senate; Armand Fallières as undersecretary, minister in six cabinets, prime minister, and president of the Senate; Raymond Poincaré as vice president of the Chamber three times, minister four times, and prime minister; Paul Deschanel as president of the Chamber of Deputies fifteen times. The fact that almost all

of these achieved success in public life without provoking antagonisms may suggest a certain neutrality of character, perhaps a lack of firmness and decision; Casimir-Périer and Poincaré may be regarded as exceptions.[1] But it should not be forgotten that in the earlier days of the Republic, when dangers threatened on every side, the election of an ambitious and energetic man would have seemed a tempting of providence.

Executive powers of the President

The powers of the President, as described in the constitution, are both executive and legislative in character. In his executive capacity the President supervises and secures the execution of the laws;[2] appoints and, by implication, removes all civil and military officers;[3] grants pardons;[4] disposes of the armed forces;[5] presides over public ceremonies;[6] receives the diplomatic agents of foreign powers;[7] negotiates and ratifies treaties;[8] constitutes the Senate as a high court of justice to try persons accused of attempts upon the safety of the state;[9] and with the consent of

[1] The former was chosen because the anarchist outrages indicated the necessity of a more vigorous government; the latter, because a patriotic feeling had been evoked by the imminent danger of war with Germany.

[2] Constitutional law of Feb. 25, 1875, Art. 3.

[3] *Id.* and Esmein, *Éléments de droit constitutionnel*, page 694.

[4] Constitutional law of Feb. 25, Art. 3.

[5] *Id.* [6] *Id.*

[7] *Id.*

[8] Constitutional law of July 16, Art. 8.

[9] Constitutional law of July 16, Art. 12.

the two chambers declares war.[1] Although war may be declared only when the President asks and the chambers give their consent, a provision of this kind can hardly be more than formal. If France is attacked, she must defend herself; and otherwise the executive, conducting the diplomatic relations with other countries and controlling the armed forces, might consult the chambers only after creating a situation which affected the honor and safety of the state. Between 1871 and 1914 France was involved in a number of small wars and military enterprises — the conquest of Tonkin in 1884, the Dahomey expedition of 1892, the subjugation of Madagascar in 1895, and the suppression of the Boxer uprising in 1900. In none of these cases was war declared or a direct application made to Parliament for authority. Regarding appointments something will be said in another place. It may be noted here that, notwithstanding the explicit language of the constitution ("he appoints to all civil and military positions"), many appointments, as regulated in various laws and ordinances, are made not by the President, but by subordinate officers and under the restrictions of a competitive merit system. The councilors of state are the only officials whose appointment cannot be lodged with subordinate officials.[2] Apparently Parliament might

[1] Constitutional law of July 16, Art. 9.

[2] Constitutional law of Feb. 25, Art. 4; Esmein, *op. cit.*, page 691; Duguit, *op. cit.*, Vol. II, page 439.

even substitute the elective for the appointive principle, as has been proposed in the case of judges.[1] In the matter of removals it may impose whatever conditions it pleases, even to the extent of establishing permanent tenure.[2] The President's power in the making of treaties is subject to important limitations. In negotiating them, it is true, he has a free hand.[3] Gambetta, when president of the Chamber in 1880, would not permit the introduction of an amendment to the tariff bill which sought to restrict this freedom. "I cannot," he said, "allow the right of the government to treat in the full liberty of its powers to be brought under discussion."[4] The committee which drafted the tariff law of 1892 admitted that the minimum rate provisions might be modified by commercial treaties. According to Eugène Pierre, the leading authority on parliamentary law, any proposal tending to limit the government's right of negotiation would be unconstitutional.[5] For the ratification of treaties, on the other hand, the consent of Parliament is usually required. Under the terms of the constitution[6] treaties of peace and commerce, treaties

Treaty-making power

[1] Esmein, *op. cit.*, page 691.

[2] *Id.*, page 695.

[3] Duguit, *op. cit.*, Vol. II, page 475; Esmein, *op. cit.*, page 767.

[4] Pierre, *Traité de droit politique, électoral, et parlementaire* (1908), Sec. 550.

[5] *Id.*

[6] Constitutional law of July 16, Art. 8.

which involve the finances of the state or the persons and property of Frenchmen residing abroad must be submitted to the chambers for approval; and no cession or exchange or annexation of territory can take place except by virtue of a law. These requirements, while covering a wide range, do not render the President's independent right of ratification altogether illusory. They do not include general treaties of peace made at the close of a war in which France did not participate (Treaty of Berlin, 1878), treaties which establish a French protectorate, and treaties of alliance such as the treaty with Russia. The chambers were not consulted with regard to the Franco-German convention of 1911 which fixed the political status of Morocco and bound the French government to concede equal commercial rights; or in regard to the agreement of 1889 which delimited the boundaries of French and English possessions on the west coast of Africa. In such cases the President must inform Parliament "as soon as the interests and safety of the state permit";[1] but he and not Parliament determines whether secrecy is desirable.[2]

Legislative powers of the President

In his legislative capacity the President may convene a special session of Parliament at any time and must do so when an absolute majority of the members of each chamber request it.[3] He

[1] Constitutional law of July 16, Art. 8.

[2] Duguit, *op. cit.*, Vol. II, page 477.

[3] Constitutional law of July 16, Arts. 1–2.

may adjourn Parliament, but not more than twice during the regular annual session or for a longer period than one month in each case.[1] He may prorogue Parliament, but only after its session has lasted for five months.[2] With the consent of the Senate he may dissolve the Chamber of Deputies, but new elections must be held within two months and the Chamber convened ten days later.[3] He may initiate legislation,[4] and appoint commissioners to assist the ministers in the discussion of any bill.[5] He may communicate with the chambers by messages which shall be read from the tribune by a minister.[6] He must promulgate laws within one month or, if Parliament has declared promulgation urgent, within three days; and within the period thus fixed he may, by a message with reasons assigned, request a new consideration of the bill, which cannot be refused.[7] He may propose to the chambers that they unite in National Assembly for the amendment of the constitution.[8] Promulgation takes place when the President signs a law, affirming that it has been regularly passed by both chambers

[1] Constitutional law of July 16, Art. 2; Duguit, *op. cit.*, Vol. II, page 298.

[2] Constitutional law of July 16, Art. 1.

[3] Constitutional law of Feb. 25, Art. 5; amendment of 1884.

[4] Constitutional law of Feb. 25, Art. 3.

[5] Constitutional law of July 16, Art. 6.

[6] Constitutional law of July 16, Art. 6.

[7] *Id.*, Art. 7.

[8] Constitutional law of Feb. 25, Art. 8.

and that it will be executed as a law of the state.[1] If the legislative procedure has been irregular; if, for instance, the Senate has voted the law in two articles while the Chamber has voted it in one, he should refuse to promulgate it, even though the two texts are otherwise identical.[2] If there has been no irregularity, however, his refusal would clearly be unconstitutional and would involve him in a conflict with the cabinet and Parliament.[3] The date of a law is the date of its promulgation; but it does not go into effect until it has been published in the *Journal officiel*.[4]

His ordinance power

The President possesses an extensive ordinance power. In part this power is conveyed to him by the constitution itself; for most of his constitutional rights and duties, including the general duty of supervising and securing the execution of the laws, are accomplished by means of decrees. The validity of such decrees may be questioned in both the ordinary and the administrative courts. The former may, in any particular case, refuse to apply an illegal decree; the latter may actually annul any decree which the President was legally incompetent to issue.[5] The President exercises the most important part of his ordinance

[1] Pierre, *op. cit.*, Sec. 506; Duguit, *op. cit.*, Vol. II, page 443.
[2] Pierre, *op. cit.*, supplement 1914, Sec. 506.
[3] *Id.*, Sec. 505.
[4] Pierre, *op. cit.*, Sec. 509; Duguit, *op. cit.*, Vol. II, page 445.
[5] See *infra*, Chapter XI.

power, however, not under the constitution, but under specific laws. The French Parliament, like all modern legislative bodies, finds its burden greater than it can bear and seeks relief by delegating authority to the executive. It frames legislation in general terms without the minute and confusing details which are so characteristic of English and American statutes, deciding upon a policy and entrusting the detailed enforcement of that policy to capable and experienced hands. Almost all the notable statutes of recent times provide that "an ordinance of public administration shall determine the measures proper for securing the execution of the present law." Such ordinances are described as "completing" the law. Parliament, going still further, frequently empowers the President to issue ordinances of public administration on particular subjects which as yet have not been regulated by law. Thus the finance act of 1906 requires him to fix the conditions under which judges shall be appointed and promoted; the public health act of 1902 requires him, in certain cases, to determine the measures necessary to prevent the spread of an epidemic; he has even been given authority to establish new taxes.[1]

Council of State annuls ordinances

These ordinances of public administration differ from other ordinances: they are issued by virtue of a specific statutory grant of power and only after the government has consulted the Council

[1] Duguit, *op. cit.*, Vol. II, page 457.

of State in general assembly and received its advice. They resemble acts of Parliament in the fact that they proceed from a delegation of legislative power;[1] and since no court can question the competence of Parliament, the Council of State long refused to entertain any question as to their validity. But in 1907 a new and momentous doctrine was evolved. The Council of State then held that since under the law of 1872 the acts of all administrative authorities may be attacked on the ground of excess of power and since the President is an administrative authority, therefore, although ordinances of public administration are issued by virtue of a delegation of legislative power, their validity may be attacked.[2] Similar decisions were rendered in 1908 and 1911. They rest upon two presumptions which may or may not be sound: first that the act of a delegated authority differs from a similar act performed by the delegating authority; and second that the President is not, as the constitution would seem to imply by investing him with the executive power, a representative of national sovereignty, but a mere administrative agent subordinate to the chambers which elect him. The only presidential decrees which now remain beyond the jurisdiction of the administrative courts are those which relate to foreign affairs (treaties, annexations of territory, etc.) and to the action

[1] According to the doctrine of the Council of State.

[2] *Revue du droit public*, 1908, page 38.

of the President upon Parliament (adjournment, dissolution, etc.).

Presidential power controlled by ministers

Now, however imposing the presidential powers may be, the constitution makes it perfectly clear that they cannot be exercised by the President himself. Every act of the President must be countersigned by a minister.[1] An "act" of the President is a written act, a message or decree; for no minister could countersign his public discourses or his conversations with foreign diplomats, even though these may have an important political effect.[2] As the countersign involves responsibility on the part of the minister, he will not affix it to any document which he disapproves; he determines that the presidential powers shall not be exercised in this or that way. Further, as he holds office by the will of Parliament and not by the will of the President, he is in a position to determine affirmatively what acts the President shall submit to be countersigned. In actual fact decrees are formulated by a minister and signed by the President as a matter of routine. Every one familiar with the mysteries of English government knows that the powers of the Crown do not belong to the king; the Crown is not a person; it is simply a convenient working hypothesis, a

[1] Constitutional law of Feb. 25, Art. 3; J. Laferrière, "*Le Contreseing ministériel*," *Revue générale d'administration*, April and May, 1908.

[2] But, as in England, the ministers are responsible in such cases. Esmein, *op. cit.*, page 814.

name employed to designate an aggregate of powers which the ministers exercise. The powers of the French President resemble the powers of the Crown. They function through a responsible parliamentary executive. To make the situation still more definite the constitution provides that the titular executive shall be responsible only in case of high treason [1] and that he shall be tried only before the Senate on charges preferred by the Chamber of Deputies.[2] This does not mean that the President is above the civil and criminal law; he may be prosecuted like an ordinary citizen except that in criminal cases the Senate alone can assert jurisdiction.[3] It means that the President, unlike the ministers, is politically irresponsible, that he cannot be removed from office unless, in the exercise of his functions, he has been guilty of high treason. Although the crime of high treason has not been defined by law, the Senate might adopt a definition of its own and, without imposing any other penalties, remove the convicted President.[4] The constitution obviously intends that high treason should be regarded in the political rather than in the strictly

[1] Constitutional law of Feb. 25, Art. 6.

[2] Constitutional law of July 16, Art. 12.

[3] Esmein, *op. cit.*, page 786; Duguit, *op. cit.*, Vol. II, page 399.

[4] Esmein, *op. cit.*, page 787; but in the contrary sense Duguit, *op. cit.*, Vol. II, page 408. See also J. Barthélemy, *La mise en accusation du Président de la République et des ministres* (1919).

criminal sense. What is the effect of this irresponsibility upon the position of the President? It makes his tenure of office independent of parliamentary majorities. But if he cannot be voted out of office as Thiers was in 1873, he cannot exercise, like Thiers, a substantial control over his ministers. He becomes, as Professor Duguit says,[1] "the prisoner of the ministry and of Parliament. In monarchical countries the king represents a social force and, in spite of his irresponsibility, he may, by resting upon this social force, play an active part in the affairs of the country. A President of the Republic, elected by the chambers and irresponsible, represents no social force and can play no active part unless he possesses a considerable personal authority, a situation which will arise very seldom and perhaps never at all."

Appointment of the prime minister

Is the President a captive of the ministry? What are the relations between these two executive organs? While the constitution says nothing directly about the appointment and dismissal of ministers, it empowers the President to appoint all civil and military officers.[2] But as the ministers are responsible to Parliament,[3] the President is necessarily circumscribed in his choice. Marshal MacMahon discovered this in the crisis of 1877. On May 16 he practically forced the resignation

[1] *Op. cit.*, Vol. II, page 481.
[2] Constitutional law of Feb. 25, Art. 3.
[3] *Id.*, Art. 6.

of Jules Simon, who was supported by a majority of two to one in the Chamber of Deputies, and appointed in his stead the Duke de Broglie, a monarchist. With the consent of the Senate he dissolved the Chamber of Deputies. But, the elections having resulted favorably to the Republicans, de Broglie resigned; and his successor, Rochebouët, finding it impossible to procure a vote of supplies, soon followed suit. MacMahon at last gave way and summoned the Republican leader Dufaure to form a cabinet. That experience proved decisive: the President must choose as prime minister a man who has the confidence of the majority in the Chamber. This does not imply that the President is altogether without discretion. In view of the fact that there are so many political groups in the Chamber and that a majority may be formed by several different combinations among them, he is not always limited to one particular politician. In England, when a cabinet resigns, the king sends for the leader of the opposition; he has no alternative. But in France any one of half a dozen men, some of them perhaps members of the outgoing cabinet, might succeed in winning the support of the majority; and within that small circle the President is free to choose. Not that the choice is final. It must be ratified by a vote of confidence. Thus on June 3, 1914, following the resignation of the Doumergue cabinet, President Poincaré invited René Viviani to take

office; and when Viviani, after negotiation with the various groups, declined, Poincaré applied successively and with the same result to Deschanel, Delcassé, Dupuy, and Peytral. Ribot accepted. But on June 12, when the Chamber refused a vote of confidence, he had to resign. Next day Viviani succeeded in forming a cabinet which could count on having a majority behind it. In practice the President does not designate a new prime minister until he has carefully analyzed the political situation with the assistance of the presidents of both chambers. He does not consult them as a matter of courtesy, but because they are better situated than any one else to indicate the will of the chambers. Latterly, indeed, the custom has been to consult with the party leaders as well. On the occasion of a ministerial crisis they flock to the Élysée, promising to support the future combination provided that they or their friends are included in it. The President chooses only the prime minister, not the other members of the cabinet. In 1877 Dufaure refused to take office until Marshal MacMahon, who first had insisted on naming the ministers of war, marine, and foreign affairs himself, gave him a free hand; and the precedent thus established has never been questioned since.[1] At the same time the advice of the President may have great influence.

Can the President dismiss his ministers? Presi-

[1] Duguit, *op. cit.*, Vol. II, page 488.

Dismissal of ministers

dent MacMahon practically dismissed Jules Simon; that is, he sent Simon a hostile letter which provoked his resignation, as it was intended to do.[1] But the outcome of that crisis has certainly not encouraged any of his successors to imitate MacMahon. The dismissal of a minister who enjoys the confidence of the lower house is as unlikely to happen in France as in England. The legal right remains. Supposing a disagreement between the two chambers, the President might dismiss the prime minister, appoint another having the support of the Senate, and, with the consent of that body, dissolve the Chamber of Deputies. But to do this he must obtain the countersign of the dismissed minister for the appointment of his successor.[2] Jules Simon countersigned the appointment of Broglie. An outgoing minister has never definitely refused to give his signature. But he might refuse. Casimir-Périer resigned as President in 1895 partly because he was placed in a ridiculous situation by the outgoing minister, Charles Dupuy, who withheld for several days the necessary countersign.[3] When a new President is inaugurated, the ministers all tender their resignations

[1] Anderson, *Constitutions and Documents*, page 641.

[2] Duguit, *op. cit.*, Vol. II, page 488. But Esmein maintains that the new minister might countersign his own appointment. *Op. cit.*, page 813.

[3] André Tridon, *Review of Reviews* (American), Vol. XLVI (1912), page 694.

as a matter of form. That they are invariably reappointed serves as a further illustration of the small part that the personal inclinations of the President are allowed to play.[1]

Subordinate rôle of President

Twice a week the President attends a meeting of the cabinet which is then technically known as the council of ministers. For certain purposes his presence is required. It is by decrees "issued in the council of ministers" that the President constitutes the Senate as a high court of justice and appoints or removes councilors of state;[2] and statutes sometimes prescribe that the decrees authorized therein shall be issued in the same way.[3] Moreover, the practice of parliamentary government as developed in France requires the participation of the President when the general policy of the government is discussed. The President acts as presiding officer; but he has no vote[4] and at least until very recently appears to have taken no active part in the deliberations and exercised no important political influence. When Fallières presided for the first time in the

[1] J. Barthélemy, *Le Rôle du pouvoir exécutif dans les républiques modernes* (1906), page 707. The earlier practice was conflicting, "but it seems that, in these last years, the theory tends to become established that the President must refuse to accept the resignation offered by a cabinet simply because of a change in the presidency."

[2] Constitutional laws of July 16, Art. 12, and Feb. 25, Art. 4.

[3] Esmein, *op. cit.*, page 802.

[4] *Id.*, page 807.

council of ministers, he said: [1] "I shall always tell you my opinion very frankly, even should it displease you. You will find me a sincere adviser, a sure friend, and occasionally a critic; but the very plainness of this attitude will guarantee that, no more under my presidency than under that of my predecessor, will there be, over against the government, a policy of the Élysée." Henri Leyret pictures one of these meetings.[2] Under the indifferent eye of the President the ministers inquire who can be the author of an abusive newspaper article, or they seek for some means of minimizing the effect of an impending interpellation, or they consider how to apportion patronage among their impatient followers. This, he says, is not as it ought to be. The President should call them to order. "It is a great error to suppose that he should preside purely as a matter of form. He has the right to speak, to discuss, to convert the ministers to his personal ideas. On the decisions which are to be taken . . . he gives his opinion and, if need be, interposes a definite refusal." [3] In fact Leyret believes that the President may and should bend the ministers to his own point of view. If his tact and his experience do not prevail, he has a means of defense and compulsion which the constitution has given him.[4] Decrees must bear his signature

[1] Leyret, *Le Président de la République*, page 37.
[2] *Id.*, page 69.
[3] *Id.*, page 71. [4] *Id.*, page 116.

as well as the signature of a minister; and by withholding it he can force compliance with his wishes. This theory has, apparently, no basis in existing practice. President Loubet was much opposed to the pardoning of Dreyfus; but when the ministers insisted and one of them threatened to resign, he finally gave his consent.[1]

Presidential messages

The dependence of the President upon his ministers will appear more clearly from a consideration of some of his nominal powers. The constitution gives him the right to communicate with the chambers by means of written messages.[2] These must not be confounded with the ministerial declarations in which the cabinets announce their policy to the chambers. The message is sent on the initiative of the President and presumably embodies his own opinions. But at the same time, since it must be countersigned and since the cabinet thus becomes responsible for it, the President can say only what he is allowed to say. Even in the case of MacMahon, who sought to control the executive and impose a personal policy, the character of the messages changed with every change of ministry. MacMahon sent numerous messages, three in a single fortnight; but since his time no president has exercised this right except to thank the chambers for electing

[1] Esmein, *op. cit.*, page 721. But Loubet once remarked: "Whatever may be said, I do not sign everything." See J. Barthélemy, *op. cit.*, page 709.

[2] Constitutional law of July 16, Art. 6.

him or to offer his resignation. "Shameful renouncement!" says Leyret.[1] "How can the President of the Republic pretend to any influence whatever in the state if he does not use means of action which publicly attest his vigilance?" The inaugural messages are all colorless; they have a family air, almost as if the same hand had written them. Perhaps Poincaré's message may be regarded as an exception. He declared that the authority of the head of the state should be preserved intact under the control of the chambers.[2] "It is his function to be a guide and adviser for public opinion in times of crisis, to seek to make a rational choice among conflicting interests, to distinguish the general from the particular, the permanent from the accidental, to strive to disentangle in each new idea the still-born portion from that part which may be kept for the future as living and productive." But surely in such vague language no one could find any indication of a personal policy.

Letters of resignation

The messages of resignation show less reserve; for by a benevolent custom no obstacle is placed in the President's way, no countersign is required for this final act of self-effacement. Strictly speaking the President does not announce his resignation in a message, but in a personal letter to the presidents of the two chambers, this apparently explaining the absence of the counter-

[1] *Op. cit.*, page 146.

[2] *Annual Register*, 1913, page 280.

sign.[1] MacMahon resigned in 1879 rather than consent to certain changes in the high command of the army, which seemed to be political rather than military in their object.[2] Jules Grévy resigned in 1887, two years after his reëlection, because of a scandal involving his disreputable son-in-law, Daniel Wilson, in the sale of decorations. The chambers forced him out. When he refused to expel Wilson from the Élysée, they overthrew the cabinet, prevented the formation of a new one, and adopted a resolution inviting him to resign. In his message Grévy declared that he gave way because, in the disturbed political condition of the time, a conflict between executive and Parliament would be perilous. Casimir-Périer resigned in 1895, having found his situation intolerable. He had read in the *Journal officiel* decrees, purporting to be his own, which he had never seen before and which he did not approve;[3] he had obtained information regarding the diplomatic correspondence with Germany, not from his foreign minister Hanotaux, but from the German ambassador.[4] His letter of resignation took the form of a dignified and

[1] Esmein, *op. cit.*, note on page 655.

[2] Vizetelly, *Republican France*, page 225.

[3] André Tridon, *Review of Reviews* (American), Vol. XLVI (1912), page 694.

[4] Vizetelly, *op. cit.*, page 413. In the same way the foreign minister kept President Fallières in ignorance of a secret treaty with Spain in regard to Morocco. *Revue du droit public*, Vol. XXIX (1912), page 316.

spirited protest.[1] It is interesting to recall that one of the offending ministers was Raymond Poincaré, who as President seemed to take a different view of the presidential powers, and that Casimir-Périer himself, when prime minister, asserted in definite language the doctrine of ministerial control of the executive power.[2]

Veto power

The constitution entrusts the President with a suspensive veto. Within the period fixed for promulgation he may require the chambers to reconsider any bill they have passed.[3] This veto power has never been employed. The reason is obvious. If the prime minister has approved the passage of the bill, the President can hardly ask him to countersign a veto message. If it has been carried against the wishes of the prime minister, he will resign; and how can the new minister, who approves the bill, be asked to veto it?[4] Duguit maintains, however, that these considerations are not valid. When a bill is carried against the ministers, he says,[5] the President may ask them to remain in office and send a veto message; when the ministers accept an objectionable bill, he may remove them and send a veto message countersigned by a new minister. "The President has only to require it. But hitherto he

[1] For the text see Leyret, *op. cit.*, page 248.

[2] *Id.*, page 34. [3] Constitutional law of July 16, Art. 7.

[4] Esmein, *op. cit.*, page 674; Bompard, *Le Veto du Président* (1906), page 273.

[5] Duguit, *op. cit.*, Vol. II, page 449.

has not required it and he probably will not as long as he is elected by the chambers. Only a President having in the country a strong personal position, due to his name, his prestige, eminent services rendered to the country could, in spite of the method of presidential election, exercise the right of veto and the right of dissolution."

Dissolution of the Chamber

The President may, with the consent of the Senate, dissolve the Chamber of Deputies.[1] That this provision requiring the consent of the Senate is inconsistent with the proper functioning of the parliamentary system will be demonstrated later on;[2] it deprives the ministers of the right to appeal against transient majorities and against the obstructive tactics of the upper house. The immediate question is whether the President may exercise this constitutional power. A position must be assumed in which the President and the Senate wish to overthrow a cabinet in which the Chamber has confidence. The President might then dismiss the prime minister, appoint a new one enjoying the support of the Senate, and dissolve the Chamber. Such was the course which MacMahon followed in 1877. It would involve difficulties which have already been indicated; for the President must first dismiss a minister who enjoys the confidence of the Chamber

[1] Constitutional law of Feb. 25, Art. 5. See P. Matret, "*Histoire du droit de dissolution en France*," *Annales de l'école libre des sciences politiques*, 1898, pages 220–248, 374–401.

[2] See Chapter III.

and therefore, apparently, the confidence of the electorate, then persuade him to acquiesce in his own deposition by countersigning the appointment of his successor, and finally invite the electorate to justify a course of action which suggests personal policy on the part of the titular executive. There has been no dissolution since 1877 and, considering the unfortunate experience of MacMahon, there is not likely to be another.

Real usefulness of the Presidency

The peculiar position which the President must occupy under a parliamentary government is not thoroughly understood. "It is probable," said Casimir-Périer,[1] "that many Frenchmen do not understand it at all." One would gather from the language of some writers that the constitution had intended the President to possess a large independent authority and that somehow the usurping ministers had deprived him of it. The constitution intended nothing of the kind. The powers of the President are simply the executive powers, placed in the hands of responsible ministers. When Gambetta described "the executive power" as the strongest which had ever been constituted in a democracy, he was not thinking of the President, as Leyret assumes, but of the ministers. "The President can do nothing by himself," said Casimir-Périer;[2] "he can in due form place his signature beside another, if he is asked to do so; but otherwise, except in the case

[1] Leyret, *op. cit.*, page 257.

[2] *Id.*, page 255.

of resignation, his signature would only serve the purpose of an autograph collection. . . . Among all the powers which seem to be attributed to him, there is only one which the President of the Republic can exercise freely and personally — the presidency of national ceremonies." This being the case, why have a President? Why not do away with this "pompous, expensive, and perfectly useless officer," as Radicals and Socialists have at times proposed? In the early years of Victoria's reign Englishmen were asking a similar question. But it has now become tolerably clear that a titular executive fills an important place in the parliamentary system. He relieves the ministers from harassing social obligations. He has, as Bagehot said of the constitutional sovereign in England, the right to encourage his ministers and to warn them. If he is a man of character and force and if he comes into office with a ripe political experience, his advice will always be received with respectful attention. While cabinets come and go, he remains in office, accumulating a knowledge of the practical working of the machinery of government which ministers cannot afford to ignore.

"Our political customs have deprived the President of the Republic of effective authority," says Joseph Barthélemy; "but they do not deny him a moral authority and a power of persuasion which he is admirably situated to exercise. He

retains, in his relations with the ministers, a highly useful mission: unoccupied with the details of departmental administration, with a task which is particularly burdensome, he has the necessary leisure to consider broadly problems which the ministers are inclined to view from one side only. He sees things which cannot be seen too close at hand. When different branches of the government disagree, he is in a favorable position to suggest the basis of an understanding. He has time to fix his attention on general policy, both internal and external. If he has an inquiring and alert mind, he may follow, as he has good opportunity to do, the questions which interest the country. In this way, having superior advantages, he creates a domain of his own in which he easily becomes preëminent. If he works and if he remains long enough in office, he will finally acquire an exceptional authority on important questions and be a valuable guide for the ministers. Without any effort to impose his will, his opinions will necessarily receive attention, and thus he will be able to render himself very useful to his country." [1]

Should the President exert more authority?

It is difficult to measure such influence. But certainly most of the Presidents have possessed it. Jules Grévy, who is sometimes represented as having established a tradition of inertia and passivity, took an effective part in shaping public

[1] Barthélemy, *Le Rôle du pouvoir exécutif dans les républiques modernes*, page 708.

policy.[1] He helped to adjust party quarrels. When in 1882 de Freycinet was outvoted in the Chamber of Deputies, Grévy persuaded him to withdraw his resignation and to ask once more for a vote of confidence. Sadi Carnot exerted such influence in two cabinet crises that he was accused of intriguing for reëlection. Although it is the fundamental principle of the constitution that "the President should hunt rabbits and not govern," [2] yet he is by no means a superfluous ornament.

Conservative Republicans propose that the President should assume a more energetic rôle. They are not satisfied with the functioning of parliamentary government. In the vicissitudes of French cabinets, in their uneasy and uncertain life, in the maneuvers which are necessary to secure the support of this or that party group, they profess to see the need of a steadying hand, of a leader who will be above petty politics and devoted to the general public interest. "The country would like to have a President elected because of merit and ascendancy," says Leyret,[3] "a chief having the special competence characterized by Thiers in these precise terms: political experience and business habits. This does not

[1] Barthélemy, *op. cit.*, pages 710–711.

[2] Leyret, *op. cit.*, page 12, quoting J. J. Weiss. Barthélemy, *op. cit.*, page 672, says: "The presidency is an honorable retreat for a veteran who is tired of political struggles and whose advice is asked without any intention of following it."

[3] Leyret, *op. cit.*, page 226.

mean that he should either engage in a systematic struggle with Parliament or play an ambitious part; it means that he should restore to the functions of the head of the state, before the eyes of attentive France, the influence and the credit of his office." In spite of this innocuous statement, Leyret shows, in specific arguments, that he really desires a diversion of power from the responsible ministers to the irresponsible President. The latter may refuse his signature; he may dismiss his ministers. Obviously such conduct would precipitate a struggle with Parliament; and, aside from this peril, the executive power would simply be dissipated, not strengthened. If the ministers are too dependent upon the individual parliamentary groups, a remedy must be found by modifying their relations with the chambers rather than their relations with the President.

Poincaré and Deschanel

The election of Raymond Poincaré portended no fundamental change in the position of the President. It is true that he was elected with the help of the Center and Catholic Right [1] and that his triumph over the Radical-Socialist candidate was regarded as an important success for the conservative parties. Newspapers like *Le Gaulois* and *Le Figaro* were naturally delighted. The

[1] Charles Dawbarn, *Makers of New France* (1915), page 15. When the result of the election was announced to the National Assembly there were cries of "A bas la dictature!" "A bas l'élu de la droite!"

Radical-Socialists were perturbed. When their convention assembled at Pau in October, 1913, it passed a resolution which denounced "the aspirations of personal policy" as tending to diminish the authority of Parliament and to encourage the return of every kind of reaction.[1] But Poincaré was a tried and loyal Republican and, as his civil marriage indicated, unfavorable to the pretensions of the clergy. His motives were beyond any suspicion. With the exception of Casimir-Périer he was the youngest and most gifted of the Presidents; and his conspicuous force of character, his sound judgment, his remarkable popularity, enabled him to restore somewhat "the influence and credit" of the presidency without trenching in any way upon the prerogatives of the cabinet. Indeed his acquiescence in the retirement of the Briand and Barthou cabinets in 1913 and the tone of his public addresses grievously disappointed those who looked for vigorous action. "In any case," Professor Dimnet wrote in 1914,[2] "he will never be again, unless he should make a *coup d'état*, the representative of the generous spirit which uplifted France and gathered every energy round him while he was prime minister." Paul Deschanel, who succeeded him in 1920, belongs to the same political party, represents the same ideal of national solidarity. For the seven years preceding his election he had served

[1] *Annual Register*, 1913, page 291.

[2] Dimnet, *France Herself Again*, page 344.

as president of the Chamber of Deputies, refusing more than once to assume the office of premier and to take part again in the sharp conflict of parties. That he received in the National Assembly 734 of the 889 votes cast indicates once more the decline of the Radical-Socialist party as well as the general conviction that the duties of the presidency require a man of broad sympathies and judicial temperament. To many Frenchmen it would have seemed more fitting to bestow the office upon the aged war premier, Georges Clemenceau; but the very qualities which enabled the Radical-Socialist statesman to become the savior of France — his courage, his daring, his impetuous fighting spirit — were unsuited to the rarified atmosphere of the Élysée.

CHAPTER III

THE MINISTERS: THEIR POLITICAL RÔLE

Rôle of the cabinet

THE French cabinet tends to become, like the English cabinet, the center of gravity in the parliamentary system. It serves as a coördinating agency among the different organs of government. Associated with the President, the cabinet ministers perform manifold legislative and executive duties in his name and are responsible for all his acts. Associated with the permanent civil service, they superintend the processes of administration, directing an elaborate mechanism which, because France is so highly centralized, extends its operations even throughout the field of local government and which, because state socialism has advanced so rapidly, touches the interests of the individual at countless points. Finally, associated with Parliament, they take the initiative in shaping all important legislation and at the same time explain and justify their conduct as administrative officers. Parliament can turn them out; but while they are in, it must accept their leadership whether that leadership be strong or weak. The constitution, though referring to the ministers in half a dozen

clauses,[1] implies rather than defines their position. By providing that they shall be responsible to Parliament, individually and collectively, and that they shall countersign every act of the President, the obvious intention was to perpetuate the arrangements which had become familiar under Thiers and MacMahon; and as the principles of this parliamentary system were well understood, it naturally left them to be regulated by precedent.

Ministers usually members of parliament

The ministers are usually members of the Chamber of Deputies or the Senate, cabinet office being legally compatible with the legislative mandate. In France, as in England, experience has demonstrated the necessity of connecting the cabinet as closely as possible with Parliament, in order to ensure, for Parliament and cabinet alike, effective means of control. The prime minister, in selecting his colleagues, must think less of their administrative efficiency than of their political strength, the votes which they can contribute to swell the common fund. Men who have displayed qualities of leadership under the exacting conditions of parliamentary life are potentially dangerous critics or valuable allies. Not only are they familiar with the intricacies of procedure and the tactics of debate, not only can they speak with authority in the name of the Chamber itself, but as a matter of course their adherents become the adherents of the cabinet

[1] Law of February 25, 1875, Arts. 3, 4, 6, and 7; law of July 16, 1875, Arts. 6 and 12.

and help to maintain it in power. Practice depends, then, upon considerations of this kind and not upon any legal requirements. The constitution expressly provides that the ministers may appear in either house and be heard whenever they request it.[1] Legally the ministers might all be taken from outside parliament, as happened in the case of the Rochebouët cabinet of 1877;[2] and even now the ministers of war and marine are frequently professional men quite innocent of the game of politics.[3] These two executive departments occupy a peculiar position, it is said, because they are technical services. But in reality an exceptional arrangement can be justified only on the ground that the army and navy should be freed as far as possible from political influences. Other services are equally technical. If the minister of marine should be an admiral, then the minister of public works should be an engineer. As a matter of fact he is not an engineer but a politician; for his business is not to run railroad trains or to build bridges, but to see that the policies formulated by Parliament in regard to railroads or highways are enforced by appropriate

[1] Law of July 16, 1875, Art. 6.

[2] In the Millerand ministry of January, 1920, three ministers and one undersecretary were without seats in Parliament.

[3] De Freycinet, minister of war for five years (1888–1892), was the first civilian to hold that post since 1848. His conspicuous success seemed to justify the departure from precedent.



CABINET OF ALEXANDRE MILLERAND

administrative action. He serves as a medium of communication between Parliament and the permanent technical officers; he consults these officers in preparing any measure for submission to Parliament, secures from them the information necessary to support it in debate, and finally supervises their enforcement of it as a law of the land. In parliamentary debates the minister need not rely altogether upon his own superficial and secondhand knowledge of a difficult subject. By presidential decree commissioners may be appointed to assist him in the discussion of any particular bill,[1] such commissioners being almost invariably high officials of the civil service. They act simply as assistants of the minister, without initiative and without responsibility. Although the constitution authorizes these appointments only "for the discussion of a particular bill," a decree of 1880 designated the governor-general of Algeria to assist the minister of the interior "in all debates and interpellations" relative to that colony; and commissioners, speaking to interpellations in the Chamber, have actually sought to justify acts which they performed under the responsibility of the minister.[2] "In the end," remarks Charles Benoist, "we shall see officials defending their chiefs before the chambers."

The constitution does not create or provide for the creation of the executive departments — the

[1] Constitutional law of July 16, Art. 6.

[2] *Revue du droit public*, 1905, page 200.

Size of cabinet determined by executive act

ministries, as they are always styled in France. In view of this silence is the executive competent to act, or the legislature? By a somewhat dubious construction of the presidential powers the executive has asserted its competence. It is contended that since the President has the right to fill all civil and military offices,[1] he has also the right to create the offices themselves; since he has the right to appoint ministers, he has the right to create ministries.[2] The cabinet, therefore, by means of presidential decrees, determines at any given time the number of ministers and the distribution of functions among them. When Aristide Briand became prime minister in October, 1915, he brought into the cabinet a general secretary of the ministry of foreign affairs, a minister of state, and four ministers without portfolio. But this power does not rest exclusively with the cabinet. Not only may Parliament interfere in a negative way by refusing the necessary supplies, but it may establish a new ministry and regulate its duties. This it has done on only one occasion. The ministry of colonies was established by a law of 1894. There were, before the war, twelve executive departments ranking in this order: justice; foreign affairs; interior; finances; war; marine; public instruction and fine arts;

[1] Constitutional law of February 25, 1875, Art. 3.

[2] Pierre, *Traité de droit politique*, Supplement of 1914, Sec. 100; Noëll, *L'Administration de la France: Les Ministères, etc.* (1911), page 56.

public works, posts, and telegraphs; commerce and industry; agriculture; colonies; labor and public welfare, the last established in 1906 by decree. In the Millerand cabinet, appointed in January, 1920, three additional departments were included: public health, pensions, and liberated regions; and the service of public welfare was transferred to the new department of public health. All ministers alike receive a salary of $12,000. They also are entitled to occupy official residences which the state provides with furniture, light, and heat.[1] If a minister takes advantage of this privilege, however, it is usually because his wife and daughters, alive to their social opportunities, bring pressure to bear upon him. So short, so uncertain is the minister's career that he may be evicted from his official home before he has really managed to move in. The civil and military honors which are paid to the minister as he enters a provincial town remain very much what they were in the days of the First Empire.[2] He is met by the prefect, the under-prefect, the mayor, and the mayor's deputies; troops line the streets; bugles sound, bands play the national anthem, officers salute, and a squadron of cavalry is assigned as a guard of honor. Although he no longer appears in a distinctive uniform, public

[1] See decree of March 11, 1911.

[2] The famous decree Messidor has been replaced by the decree of June 16, 1907; see also Pierre, *op. cit.*, Supplement, Sec. 1144.

attention is attracted by the tricolor cockade worn by his coachman or chauffeur, emblematic of Republican authority like the fasces of ancient Rome. On ceremonial occasions the ministers take rank after the presidents of the two chambers;[1] among themselves they follow the prime minister in the order indicated above, the minister of justice coming first, the minister of labor last.

The undersecretaries

The English ministers, having access to only one branch of the legislature and needing representatives in the other,[2] are assisted by undersecretaries; but in France, where the ministers participate freely in the debates of both chambers, a different practice prevails. Undersecretaries are assigned, not to all executive departments, but to those in which the ministers find themselves overburdened with work.[3] Thus the prime minister, whatever portfolio he may hold, can hardly discharge his complex duties without relying, in less important matters, upon the services of an assistant. Before the war there were usually four undersecretaries.[4] One assisted the prime minister; another was undersecretary of fine arts; a third

[1] Decree of June 16, 1907.

[2] See Lowell, *Government of England*, Vol. I, page 73.

[3] Regarding the undersecretaries see Pierre, *op. cit.*, Supplement, Sec. 109; Esmein, *Éléments de droit constitutionnel* (1914), page 795 *et seq.*; Duguit, *Traité de droit constitutionnel* (1911), Vol. II, page 491 *et seq.*

[4] In 1915, owing to the exigencies of the war, Briand appointed eight undersecretaries, four connected with the ministry of war, one with the ministry of marine.

usually supervised the postal and telegraphic services; the fourth was attached to this or that ministry according to the exigencies of the time. In view of the heavy burden falling upon the government in the work of reconstruction, Millerand included in his post-war ministry (1920) ten undersecretaries.[1] A presidential decree defines, in some detail, the duties of each one. While the undersecretaries go in and out of office with the cabinet, they are not ministers in the constitutional sense of the term. They have no authority to countersign the acts of the President. Legally the ministers should be ready to assume, before Parliament, full responsibility for their conduct as for the conduct of any other subordinate. But in practice the undersecretaries seem to have become directly responsible, two of them at least having retired in consequence of votes in the Chamber of Deputies. If this practice finds no warrant in the constitution, it is none the less effective on that account. Another anomalous practice was introduced in 1906 when the undersecretaries began to attend meetings of the council of ministers, a body which performs certain specific constitutional duties and which was presumably intended to include the President, the ministers,

[1] These were attached to the following departments: foreign affairs (premier), interior, finances, agriculture, public instruction, commerce (undersecretary for revictualling), and public works (posts and telegraphs, ports and merchant marine, water power, aeronautics).

and no one else. The undersecretaries are almost invariably members of Parliament. In fact the offices exist not only to relieve overburdened ministers, but also to provide means for satisfying ambitious young deputies whom it would be unwise to overlook. Doubtless the prime minister would find Parliament easier to control if he had, like his English prototype, some sixty or seventy offices to distribute instead of twenty-five;[1] for the deputy who gets an office or whose friend gets an office has a definite interest in the fortunes of the cabinet. The undersecretaries may speak in both houses; they are entitled to the same civil and military honors as the ministers; but their salaries are considerably lower, varying from $5,000 to $7,000.

Relations of the premier with his colleagues

The prime minister — or president of the council of ministers, to use his official designation — is appointed as such by decree of the President of the Republic. He does not wield over his colleagues an autocratic authority. He appoints them, it is true, and may remove them; he has, apparently, the power of life and death. But owing to his dependence upon a coalition of parliamentary groups — the necessity of consulting and harmonizing their wishes, the perpetual haunting fear of secession in this quarter or that — he is more often engaged in soothing ruffled feelings than in devising measures of discipline. It

[1] In the Millerand ministry (1920) there were fifteen ministers and ten undersecretaries.

is significant that he usually elects to preside over the ministry of the interior. He should possess, as Louis Barthou has said,[1] "the means of action which the ministry of the interior alone confers." It gives him control of the police, the prefects, the subprefects, the prefectoral councils, the municipal councils, and the electoral machinery; and if he does not exercise this control, some other minister does. "Such powers have awakened in a colleague's mind" — M. Barthou is apparently alluding to the case of M. Clemenceau, who as minister of the interior dominated the Sarrien cabinet (1906) and in a few months actually became premier — "the ambitions of an heir." Unfortunately no single man is adequate to the double task of superintending the general conduct of the government and directing a great executive department; parliamentary life is too intense. A prime minister of dominant personality — another Waldeck-Rousseau — might maintain his ascendancy in the cabinet without holding a portfolio; René Viviani in the war cabinet of 1914 and Georges Clemenceau in the war cabinet of 1917 held no portfolio;[2] but under normal circumstances the prime minister would be heavily handicapped, controlling without means

[1] *Revue hebdomadaire*, Vol. IV (1911), page 608.

[2] In the other war cabinets Briand (1915) and Ribot (1917) chose the ministry of foreign affairs; Painlevé (1917), the ministry of war. In view of the circumstances of the time these departments were of the first importance.

of control and acting without means of action. On the other hand, the English prime minister, having an assured position, almost always occupies a titular office.

Cabinet meetings

The existence of the cabinet, so long ingeniously disguised in English law, is expressly recognized in the French Constitution of 1875. Not only does the constitution make the ministers "collectively" responsible to the chambers, but it provides that certain acts must be performed "in the council of ministers" and that during a presidential interregnum "the council of ministers" shall be invested with the executive power. Likewise many important laws authorize the issuing of decrees in the council of ministers — for instance, the law of 1884 which permits the dissolution of municipal councils by decree. By virtue of an unbroken tradition which extends back to the days of the monarchy, the President presides in the council of ministers; but the ministers have the privilege of meeting by themselves, of holding what are called cabinet councils, as frequently as they please. Latterly it has been the custom to hold a council of ministers at the Élysée twice each week from nine to twelve in the morning; and to hold one cabinet council at the offices of the prime minister.[1] Presumably all questions of general policy are laid before the council of ministers. The proceedings of both

[1] Poincaré, *How France is Governed*, page 197; Esmein, *op. cit.*, page 806.

bodies are secret. There is no secretary, no record. The brief summary which the prime minister frequently gives to the newspapers contains no reference to serious discussions or to conflicts of opinion.[1]

Ministerial responsibility

The constitution provides[2] that the ministers shall be collectively responsible to the chambers for the general policy of the government and individually for their personal acts. In other words they can remain in office only so long as their direction of affairs meets with parliamentary approval. Corporate responsibility insures continuous coöperation, continuous harmony between the cabinet and Parliament. It does not imply that the cabinet should seek to discover and follow the will of Parliament. "The government," as Raymond Poincaré said in 1906,[3] "must in no way abandon its rôle of leadership; . . . in a word it must claim decisively the honor and the responsibility of governing." But whenever Parliament refuses to accept such leadership, the cabinet should resign; and this refusal usually takes the form of a vote of want of confidence. Individual responsibility hardly seems consistent with the character of parliamentary government; it suggests divided counsel, conflicting views within the cabinet; it enables deputies to interfere in technical administrative

[1] Esmein, *op. cit.*, page 807.
[2] Law of Feb. 25, Art. 6.
[3] *Le Temps*, May 30, 1906.

matters which they are hardly competent to judge. Although individual ministers have sometimes been forced to retire (for instance General André in 1904 and Admiral Thomson in 1908), the acquiescence of the cabinet, its failure to intervene and protect the minister by demanding a vote of confidence, is regarded as a confession of weakness. Beyond question the tendency now is to substitute corporate for individual responsibility. This agrees with the English doctrine. When official misconduct has involved the commission of criminal offenses, Parliament may feel that enforced resignation is an inadequate remedy. It may then resort to impeachment proceedings, the Chamber formulating charges, the Senate assuming jurisdiction;[1] but whether offenses of a political nature, not defined in the criminal code, can properly be taken as the basis of action remains in dispute.[2] In the only impeachment trial, that of Louis J. Malvy, minister of the interior 1914–1917, the Senate did not base its decision on the criminal code. It found him guilty of acts falling short of treason and sentenced him to banishment for five years.[3] Esmein

[1] Constitutional law of July 16, 1875, Art. 12.

[2] Esmein, *op. cit.*, page 843; Duguit, *op. cit.*, Vol. II, page 507; A. Bel, "*La Responsabilité des ministres*," *Grande Revue*, Feb., 1900, page 431.

[3] See *Revue politique et parlementaire*, Vol. XCVI, pages 306–9; Vol. XCVII, pages 266–280; and Aug. 10, 1919, pages 137–148. In convicting Malvy of an act not contemplated by the code, observes Duguit, in imposing upon him

maintains that the ministers may be tried in the ordinary courts for any breach of the criminal law.[1] It seems to be doubtful whether they can, without previous action on the part of the legislature, be held liable in the civil or administrative courts for damages which their official acts have occasioned.[2]

Are the ministers responsible to both chambers?

It is to "the chambers," according to the constitution, that the ministers are politically responsible. Is this language to be taken in its literal sense? Has the Senate the same power as the Chamber of Deputies to make and unmake cabinets? Both chambers may exercise control over the cabinet by means of questions and interpellations, amendments to money bills, and parliamentary inquiries; both may vote orders of the day deliberately announcing lack of confidence in the cabinet; and since the constitution speaks of responsibility "to the chambers" without making any exception in favor of one or the other, some eminent autho rities contend that the ministers are dependent upon the Senate and Chamber of Deputies in precisely the same way.[3]

a penalty prescribed by no law, the Senate violated article 8 of the Declaration of Rights of 1789 and article 4 of the criminal code. See also J. Barthélemy, *La Mise en accusation du Président de la Républ'que et des ministres* (1919).

[1] *Op. cit.*, page 844.

[2] Esmein, *op. cit.*, page 850; Duguit, *op. cit.*, Vol. II, page 597.

[3] Duguit, *op. cit.*, Vol. II, page 504, citing other writers in his support.

The validity of this argument, however, is open to question. The phrase employed in the constitution was current in the reign of Louis Philippe when the ministers were responsible to the lower house alone; and neither the debates in the National Assembly nor the political literature of the time indicate any intention to give it a different meaning.[1] Whatever the intentions of the National Assembly may have been, the actual working of the constitution is infinitely more important. In practice the Chamber of Deputies has established its ascendancy. During the first twenty years cabinets were never directly attacked by the Senate, nor did they feel called upon to resign because of its rejection of government bills.[2] Thus in 1882, when an article of the education bill was rejected, de Freycinet, remaining in office, accomplished the object which he had in view by issuing a presidential decree; and the propriety of his course was not questioned.[3]

Resignation of Bourgeois, 1896

But in 1896 the Senate for once took an aggressive attitude and boldly insisted on its right to force the Bourgeois cabinet out.[4] Five times, between February 11 and April 21, it voted want of confidence by large majorities. Bourgeois, sustained

[1] Esmein, *op. cit.*, pages 828 *et seq.*

[2] In 1890 the Tirard cabinet retired when the Senate refused to ratify a treaty with Greece, this being the only exception to the general practice.

[3] De Lanessan, *La Crise de la République* (1914), page 313.

[4] For the details see Esmein, *op. cit.*, pages 830–833.

by the Chamber, held his ground. Finally, however, when the Senate refused to appropriate supplies for the Madagascar expedition "until it shall have before it a constitutional ministry possessing the confidence of the two chambers," he felt that the national safety was endangered and, with that explanation, resigned. Méline, who succeeded him, described accurately enough both the strength and the weakness of the Chamber's position. "The Chamber of Deputies, issue of universal suffrage, exercises a preponderant influence upon general policy; but although it possesses, because of its origin and because of the constitution, incontestable rights, it cannot legislate without the coöperation of the Senate. There we have a situation which dominates theoretical discussions and renders them useless. Reciprocal good will has hitherto sufficed to settle all difficulties; to that we again appeal."

Briand and the Senate, 1913

The incident of 1896 stands alone. Frequently the prime minister has informed the Senate that he would regard the adoption of a particular measure as a matter of confidence, thus forcing it to choose between accepting his leadership or acquiescing in his retirement.[1] This does not imply any recognition of the claims that were put forward in 1896; it is simply a means, voluntarily adopted, of compelling favor-

[1] For instance, Dupuy on February 28, 1899; Waldeck-Rousseau on June 2, 1900; Rouvier on November 9, 1905; Clemenceau on June 26, 1908.

able action. Today there can be no serious doubt that the ministers are responsible to the Chamber of Deputies alone. Since 1896 only one cabinet, that of Aristide Briand, has retired before a hostile vote of the Senate. But unfortunately, since the ministers cannot dissolve the Chamber and appeal to the country for support against the Senate, they are not in a position effectively to prevent their measures being mutilated. One thing they can do — make the passage of government bills a matter of confidence. In March, 1913, Briand did this in the case of the proportional representation bill which had already passed the Chamber, for he believed that a cabinet should never hesitate to employ its last resource in the effort to make the will of the Chamber prevail.[1] He sacrificed office to principle. A year later, when the income tax bill was defeated, he reproached Doumergue for having neglected to put the question of confidence.

Cabinet cannot coerce Senate by dissolution

Conflicts with the Senate, such as occurred in 1896 and 1913, might, of course, be settled by an appeal to the electorate, the premier requesting (in the name of the President) and the Senate consenting to a dissolution of the Chamber of Deputies. According to the principles of the

[1] Briand has been criticized for resigning. He should have secured a new vote of confidence from the Chamber, says de Lanessan (*La Crise de la République*, page 314), and then either carried the bill through the Chamber again or asked the President at once for the dissolution of the Chamber.

parliamentary system both sides would accept the result of the election as conclusive. But why should the Senate consent? Why should it surrender, for the uncertainties of a popular verdict, the advantages of a known situation in which it can with impunity block the whole legislative program of the government? The very fact that the government desired to consult the people would suggest that it expected a favorable result. In England, where the ministers enjoy the independent right of dissolving the House of Commons, a general election has been the normal method of forcing compliance on the part of the upper house.[1] The absence of such a right in France has been productive of continual embarrassment. Not only are the ministers powerless in the face of deadlock between the chambers, but they can take no appeal against the action of artificial and evanescent majorities in the Chamber of Deputies itself. They may be overthrown by intrigues, by combinations hastily effected in the lobbies. Fully appreciating the insecurity of their position, they are sometimes driven to assume an almost servile attitude, like the revolutionary agitator who, hearing the tumult of a passing mob, exclaimed: "I am their leader; I must follow them!" Effective leadership is necessary. The ministers would be in a better position to exercise it if, when the Chamber

[1] The Parliament Act of 1911 seems to have rendered dissolution unnecessary.

withdrew its confidence, they could ask the country to decide between them and their adversaries. The wrecking of cabinets, now undertaken with so light a heart, would become a dangerous employment; it would involve the deputy in election expenses and perhaps in the loss of his seat. That the House of Commons in England or Canada lacks the power to overthrow cabinets, that it can only criticize and, as a final resort, ask the electors to overthrow them has made leadership on the one hand and popular control on the other all the more effective.

Cabinet dependent on coalition of groups

But the weakness of French cabinets, while emphasized by the absence of the right of dissolution, is mainly due to certain peculiarities of the party system. In the Chamber there were, after the elections of 1914, ten parties or "groups," the strongest of which included little more than a quarter of the deputies, and a considerable number of free lances who would not sacrifice their independence by affiliating with any group, however slack its organization and discipline might be; in the present Chamber there are seven groups and about the former number (50) of independents. In forming his cabinet the prime minister must distribute the portfolios in such a way as to combine several groups into a working majority. The difficulties of such a task are obvious. Each group is inclined to make inordinate demands both as to the portfolios which shall

be conceded to it and the policies which shall be embodied in the government program. "During the exciting days of a ministerial crisis," says Professor Garner,[1] "the Parisian journals give detailed accounts of the hurried visits of the newly appointed premier to the houses of prominent politicians, of his interviews, pourparlers, overtures, solicitations and possible combinations, and each day there is a summary of his failures and his successes. Sometimes his *démarches* are prolonged through a period of several weeks before the cabinet is finally completed; not infrequently at the last moment, after the list has been sent to the *Journal officiel* for publication, the combination is upset by withdrawals." The cabinet, when formed, includes more or less discordant elements; it is, as Burke said of the Chatham cabinet, a diversified mosaic; and if the prime minister experienced difficulty in putting it together, his resources are equally strained in the effort to keep it from falling apart. If the coalition of groups dissolves, so does the cabinet, for it loses its majority in the Chamber. It is a curious fact that while the general elections always result favorably to the government, in the interval of four years between elections the Chamber may overturn half a dozen cabinets, sometimes on most trivial grounds. "Every effort of the parties in the chambers (where they are much

[1] "*Cabinet Government in France*," *Political Science Review*, Vol. VIII (1914), page 366.

divided)," wrote Professor Esmein,[1] "is concentrated in a struggle for the conquest of power, that is, of the ministry. Hence the incessant intrigues and surprises of each day, abnormal coalitions, uncertainty, the unforeseen." The overthrow of cabinets is frequently due, not to any consideration of policy, but to the insatiable thirst for office. Thus when a cabinet was overthrown ostensibly because of its refusal to abolish the sub-prefects, its successor ignored altogether the question which had precipitated the crisis.[2] The extreme Left and the extreme Right, having nothing else in common, may yet combine momentarily for the purpose of overthrowing a cabinet.

Unfortunate results of this dependence

What are the consequences of this situation? "The ministers," says Léon Duguit,[3] "never sure of the morrow, always absorbed by the fear of an interpellation and a possible fall, think only of recruiting friends in parliament by distributing the government favors which they control." As a result "the Chamber of Deputies tends more and more to interfere in all branches of the administration; it seeks to make its action felt in all the details of daily administrative life; there is no minor incident of local police, there is no appointment of the lowest official, which is

[1] *Éléments de droit constitutionnel*, page 1046.

[2] De Lanessan, *La Crise de la République* (1914), page 285.

[3] "*Le Fonctionnement du régime parlementaire*," *Revue politique et parlementaire*, Vol. XXV (1900), page 367.

not made the subject of an interpellation. . . . This is not the parliamentary system, but a caricature." The Chamber has not been willing to trust and follow its chosen leaders. "Instead of limiting itself to coöperation with the executive power in developing general rules of policy," says Joseph Barthélemy,[1] "it has sought to impose its own ideas. . . . It does not advise, it orders; it is the supreme guide of the administration. . . . The deputy who intervenes in the administration is defending his own interest, the minister who resists him is defending only the public interest: the deputy is necessarily the stronger. Servants of their constituents, the deputies are obliged to bring to the head of the State men who will obey them; the ministers are so highly placed only that they may obey the better. Authority starts at the bottom. The government does not govern; it executes." According to Émile Faguet[2] France is governed eight months of the year by Parliament, four months by the ministers. Individually the deputies exert such pressure upon the ministers that Camille Sabatier has coined the word "deputantism" to describe the existing form of government.[3] This critical attitude is so general among

[1] *Le Rôle du pouvoir exécutif dans les républiques modernes* (1906), pages 681, 683.

[2] *Problèmes politiques* (1903), page 8.

[3] *Revue politique et parlementaire*, Vol. LXX (1911), page 204.

leading politicians and publicists that it cannot be ascribed to partisan interest or to superficial observation. Indeed the prevalence of criticism, the belief that reform is imperative, has already led to important changes in parliamentary procedure. These are discussed in Chapter VII. Here it may be noted that the deputies have consented to a modest curtailment of their right to amend money bills; that the exaggerated use of the interpellation, by which the minority endeavor to discredit the ministers and carry a vote of want of confidence, has been somewhat restrained; and that the committees, now chosen by a method of proportional representation, reflect exactly the strength of the various groups and accept government policies more readily than they used to do when chosen practically by lot. But these changes, after all, while they improve the position of the ministers, leave untouched the primary cause of their weakness. French writers unite in condemning the group system, the multiplicity of parties in the Chamber, as inconsistent with the proper functioning of parliamentary government; [1] and the groups have diminished little in number. The alliance of four groups of the Left, which gave the ministers a fairly coherent and reliable majority during the first years of the century, did not prove a permanent solution. Notwithstanding the elimination of the monarchists as a

[1] Garner, *op. cit.*, pages 363–364 and notes; and especially de Lanessan, *La Crise de la République* (1914), *passim.*

serious political force and the tendency to develop a strong Republican Center, France still seems far from realizing the ideal of President Poincaré — "a single central party, very strong, but still homogeneous, which . . . would strive to establish a practical harmony between those two correlative notions" of conservatism and socialism.[1]

Short duration of cabinets

The cabinets, like the majorities on which they depend, are ephemeral.[2] Their average life under the present Constitution has scarcely exceeded ten months. Only six presidents of the council of ministers have held office continuously for more than two years: Jules Ferry (1883–5), Jules Méline (1896–8), Waldeck-Rousseau (1899–1902), Émile Combes (1902–5), and Georges Clemenceau twice (1906–1909 and 1917–1920), the average period for the six being about two years and a half. Three retired before the end of a month: Rochebouët (1877), Armand Fallières (1883), and Ribot (1914, four days). With the fall of a cabinet, even though some of its members continue in office under the new premier, each ministry commonly passes into the hands of a new man. There have been exceptional cases; Charles de Freycinet as minister of war and Théophile Delcassé as minister of foreign affairs retained

[1] *Revue de Paris*, Vol. II (1898), page 649.

[2] Léon Muel, *Gouvernements, ministères et constitutions de la France de 1789 à 1895* and *Histoire politique de la septième legislature (1898–1902);* Garner, *op. cit.*, pages 368–369; and list of cabinets given in Appendix Two.

their portfolios in five successive cabinets, the former for five years (1888–92), the latter for seven (1898–1905); and continuity in the control of departments is now perhaps more common than it used to be. Malvy was minister of the interior for more than three years (1914–1917); Clementel minister of commerce for more than four years (1915–1920). That there was little precedent for the long tenure of Delcassé may be gathered from the complaint of the Czar Alexander III. "During the last sixteen years," he said, "the French minister of foreign affairs has been changed fifteen times, so that one never knows if one can rely on any real continuity in French foreign policy." [1] One interesting consequence of cabinet instability is the presence in both chambers of a large number of men who have at some time achieved the dignity of minister. In 1913, according to Joseph Barthélemy,[2] there were some thirty in the Chamber, forty in the Senate, and thirty outside Parliament. These politicians, having won their way to office, perhaps more than once, and thus established a kind of claim to future consideration, are known as *ministrables;* and Charles de Freycinet, prime minister in four cabinets and minister in nine others, may be taken as the archetype. The newspapers, somewhat facetiously, represent the *ministrables* as perpetually consumed by a thirst for office and interested in

[1] Vizetelly, *Republican France*, page 432.

[2] *Revue du droit public*, Vol. XXX (1913), page 394.

nothing so much as the fall of a cabinet. The multiplication of groups has been largely due to the ambition of politicians to gain entrance to the cabinet; by forming and heading separate factions they are able to insist upon recognition. That ministerial crises should occur with such frequency cannot be regarded as inevitable or even normal under the parliamentary system. Since 1867, when the Canadian provinces federated, the Dominion has been governed mainly by three men: Sir John A. Macdonald 1867–1874 and 1878–1891, Sir Wilfrid Laurier 1896–1911, and Sir Robert Borden from 1911. Canadians are so well satisfied with the working of the two-party system, the existence in the House of Commons of a government and an alternative government or "opposition," that they have made the leader of the opposition a state official, paying him a salary of $8,000 a year and expecting him not only to expose the mistakes of the cabinet but to formulate a positive policy of his own. The contrast with English practice is equally striking. In the first thirteen years of the century France had ten prime ministers; England had only ten in the fifty-five years preceding the war. Since 1875 France has had more than fifty cabinets, England only a dozen.

It does not entail discontinuity of policy

It must not be taken for granted that the instability of cabinets involves equal instability in policies and administration. In England a new cabinet brings in a new set of men and, to

some extent, a new set of measures. But in France, where the new cabinet depends on very much the same majority as the old and must therefore include representatives of very much the same groups, the personnel seldom undergoes a complete change. Five times out of six (this is almost exactly the average) some of the ministers hold over. Thus Poincaré in 1912 retained five members of the outgoing cabinet; Briand in 1913, six; Barthou in the same year, five. Years ago, when Clemenceau was reproved for concerting the downfall of so many cabinets, he said: "I fought only one; they are all the same." It is no less significant that the chiefs of more than one third of the cabinets have held office under their immediate predecessors. Latterly this proportion has been much higher; since the retirement of Sarrien in 1906 eleven of the sixteen prime ministers have been taken from the outgoing cabinet. This continuity in personnel implies continuity in policy — a result which is all the more likely to follow in view of the fact that cabinets are driven from office not by the voters on some question of general policy, but by the Chamber of Deputies usually on some issue of relative insignificance. "It thus happens," says Professor Garner,[1] "that the French chamber will overthrow a ministry one day and the next day acclaim with enthusiasm and give its confidence to a new ministry, a majority of whose members

[1] *Op. cit.*, page 373.

belonged to the one condemned the day before and who were responsible wholly or in part for the policy which caused its downfall." Some American writers profess to see positive advantages in the weakness of the cabinet. "The change of cabinets in France," says Professor Shotwell,[1] "has not the significance it would have in England. It does not mean a reversal of policy. Generally it means more efficiency in carrying out the same policy. The new cabinet takes up the burden where the last one lays it down. Behind them all stands Parliament, absolute master of the whole situation, ready to dismiss the new ministers as soon as they show weakness or commit a blunder. The passing of French ministers is rather a sign of stable policy than of variability, as would be the case in England. . . . There is no senseless swinging of the pendulum from extreme conservatism to extreme radicalism. . . . It has not been a choice between opposite poles, but between more or less of the same thing. . . . A country which seems a paradise of anarchy when one reads of its shifting ministries exhibits upon examination a surprising degree of regularity, where year by year the scope of reforms is enlarged, the democratic bases of the Republic are strengthened, and its enemies in army or church suppressed."

Nevertheless the fickleness of the parliamentary

[1] "*The Political Capacity of the French*," *Political Science Quarterly*, Vol. XXIV (1908), pages 119–120.

But it does (1) dissipate responsibility,

groups and the vicissitudes of the ministers entail some serious practical disadvantages. In the first place there is a dissipation of responsibility. The ministers are not in office long enough to develop a program and bring it to fruition; the task is dropped when half complete and taken up by new men who may give it a different character or abandon it altogether. M. Ribot, in a caustic mood, once remarked that the short life of cabinets was an excellent thing, since ministers could not, under the circumstances, be criticized for failing to keep their promises. And while the ministers remain in office they are so beset and subjected by the chambers that the voters can never tell where the praise or blame should rest; in England, on the other hand, where the ministers dominate parliament, they can be held accountable for the whole work of a parliamentary session, for the things done and for the things undone. In the second place legislation suffers. It is true that the chambers have some notable achievements to their credit, that they have accomplished in recent years some striking reforms. But when Esmein alludes to "the disorganization of legislative work" and to the fact that "the time lost in these struggles and these skirmishes prevents the chambers from applying themselves to serious and sufficient legislative work," [1] he is voicing an opinion that is very general among French writers. Parliament must

(2) hamper legislation,

[1] *Op. cit.*, page 1046.

be judged by what it has failed to do as well as by what it has done; and its sins of omission are not all venial. Why, for instance, has France no general law regulating the status of civil servants? The government employees have demanded it; the Chamber has shown itself favorably disposed; Clemenceau and other ministers have introduced government bills.[1] Ten years ago legislation seemed imminent; ever since that time ministers and committees have been tinkering with bills; but new ministers and new committees, intervening from time to time, have prevented any final action being taken. Down to 1914 eight different income-tax bills were shaped in committee and debated by the Chamber without being enacted into law. Over revenue and supply bills the ministers have no adequate control; and the abuses which naturally develop under such circumstances have been condemned by all authoritative writers on public finance. The deplorable condition of the finances was revealed in the Senate debates on the budget of 1914. The reporter demonstrated that instead of a surplus of 420,000 francs there would be a deficit of 465,000,000 francs; this being disguised by deceptive statements. He attributed the situation to the absence of cabinet leadership — to the pressure successfully exerted by irresponsible members of Parliament. "We have no budget

[1] See A. Lefas, *L'État et les fonctionnaires* (1913), page 257 and 300 *et seq.*

because we have no government," says de Lanessan,[1] "and we have no government because our parliamentary system lacks the great parties indispensable to its proper functioning." In the third place administration suffers. This results partly from the fact that Parliament, having subordinated the ministers, insists upon administering itself. But still more serious is the lack of supervision over the executive departments. However perfect a bureaucratic organization may be, it always tends to develop certain faults. It adheres too closely to precedent; it becomes wedded to routine. The business of the political chief is not only to determine what policy shall be pursued, but also to discover and correct abuses which the permanent official may hardly be conscious of; and unless he has time to familiarize himself with the working of the administrative machine, he is not in a position either to appreciate the need of reforms or to inaugurate them. That the French civil service has felt the absence of such control can hardly be a matter of dispute. Henri Chardon has shown, in several of his writings, what absurd delays official red tape imposes.[2] In recent years public criticism has grown more and more insistent, more and more impatient, over the deficiencies of the postal service, the telephone service, the rail-

and (3) impair the business of administration

[1] *La Crise de la République* (1914), page 235.

[2] See, for instance, *Les Travaux publics* (1904), page 126 *et seq.* and 310.

road service. In fact, says Georges Cahen,[1] after describing some of the conditions which have been most generally attacked, "there is not a single service which has escaped criticism, not a single one which citizens have not had to complain of." But, as he points out, the root of the trouble is not any incapacity on the part of permanent officials. The ministers are responsible, and yet, holding office for a few brief months, have no means of discharging their responsibility. "When ministers come and go with such rapidity," says Percy Ashley,[2] "it is certain that each newcomer — anticipating but a short stay — will be disinclined (unless he be a man of exceptional force) to attempt to inaugurate any considerable changes, that he will be ready to let matters go on in the old departmental way."

[1] *Les Fonctionnaires: leur action corporative* (1911), page 51.
[2] *Local and Central Government* (1906), page 72.

CHAPTER IV

THE MINISTERS: THEIR ADMINISTRATIVE RÔLE

Ministers as administrative chiefs

THE ministers are, of course, something more than parliamentary leaders. They are heads of executive departments, directing the various branches of administration, deciding innumerable matters which touch private interests, and commanding a great force of civil servants now hardly less than half a million strong.[1] It is in this executive capacity that their power is most notably displayed. In shaping national policies and formulating them as law the ministers are, for reasons which have been indicated, relatively weak; they do not dominate Parliament as English and Canadian ministers do; few premiers have remained in office long enough to impress their personalities upon the country or to establish any effective political ascendancy. But as heads of departments they possess a wide range of power. This is due partly to the rapid growth of state activities, of public ownership

[1] For the number of government employees see A. Lefas, *L'État et les fonctionnaires* (1913), pages 25–40. The figure given above does not include laborers, the army and navy, or the officials of departments and communes.

and public regulation. But it is due still more to the fact that France is a unitary state, subject in matters of both local and national concern to the will of Parliament, and at the same time highly centralized. The field of local autonomy which Parliament has marked out for the subordinate divisions of the country — for the departments and communes — is somewhat restricted; and even where competent to act, the local authorities are in many ways subject to supervision and control.

French administration is (1) centralized

This centralization is well exemplified by the position of the prefect. Appointed by the minister of the interior and subject to removal on purely political grounds, he is at once the representative of the national government and the chief executive officer of the department. In the latter rôle he executes the resolutions of a local assembly, the general council; but because his tenure of office is independent of its will and because on his advice its resolutions may be annulled by the minister, he is far from being a mere agent of the council; he usually quite overshadows it. As the representative of the national government he carries out the instructions of the ministers and supervises the conduct of national business within the department. His duties cover an astonishing range. They relate to such diverse subjects as elections, agriculture, police, sanitation, public lands, highways, education, communal affairs, and recruiting for the army. He is, for instance,

chairman of the departmental council of primary instruction and appoints teachers in the primary schools. The main highways, even where they pass through the confines of a large city, come under his jurisdiction as agent of the minister of public works. He exercises a large measure of control over the communes. "In fact," says Paul Deschanel,[1] "most of the communes are administered by the bureaux of the prefectures and subprefectures."

(2) concentrated

But administrative power is not only centralized — the national government supervising and restricting the action of local government; it is also concentrated. Little initiative or discretion is left in the hands of the agents of the central ministries. Supervision has been pushed to an extreme which often results in absurd delays and impairs administrative efficiency. According to Noëll,[2] not a franc can be spent, not a chair or a towel purchased without authority from Paris. On one occasion an official had to wait two years for permission to buy a box of pins, the request passing successively through the hands of twenty-five or thirty higher officials. With improvements in the means of intercourse the tendency towards concentration has been accentuated. "A minister who can talk familiarly from his cabinet with the prefect of Pau or Lille," says the Marquis d'Ave-

[1] *Revue hebdomadaire*, April, 1910, page 44.

[2] *L'Administration de la France: les ministères, etc.* (1911), page 209.

nel,[1] "evidently possesses an authority more extensive than his predecessors of sixty years ago. A prefect who can be scolded from the cabinet is no more than a bureau chief." These circumstances explain the widespread and growing sentiment in favor of "deconcentration," of entrusting to local agents a larger power of decision. Such a reform would not deprive the minister of effective control. He would still exert pressure as he does now by means of periodic inspection. The inspectors (who are attached to all the executive departments except those of justice and foreign affairs) are appointed by presidential decree, sometimes after competitive examination. They make tours of inspection during the summer months and, after rendering their reports, remain in Paris to advise the minister on matters relating to the exterior services.

Theory and practice of ministerial control

Whatever minor divergencies may exist, the same general plan of organization prevails in each of the fifteen ministries.[2] The minister rules, as over a principality, with almost despotic sway. He controls the personnel; he renders all final decisions; he is responsible for everything. Such is the theory. In practice limitations confront him at every turn. In appointing and removing subordinates he is subject to restraints which have gone far towards the elimination of patronage and spoils. Physical facts circum-

[1] *Id.*, page 208.

[2] On this subject see H. Noëll, *op. cit.*

scribe his power of decision. The mass of administrative business is so formidable that, considering the many demands upon his time, he cannot hope to be familiar with anything but its broader aspects. He spends the morning in consultation with the other ministers or with politicians who, for themselves or their friends, press him for favors and concessions; the more extensive his patronage, the more numerous and insistent are his visitors. In the afternoon he is occupied with parliamentary duties, committee meetings, the preparation of a speech, or some other political interest. Towards six o'clock, according to the lively description of Henri Chardon,[1] letters and documents of all kinds, representing the labors of the departmental bureaux for the day or for several days, are hurried to his private office to be signed. The officials wait impatiently and anxiously in the antechamber. If he does not sign, the whole business of the department will be suspended. Where is he? What is he doing? "At last the minister takes his courage in both hands; he signs; he signs with all his might, thus accepting responsibility for a mass of documents with which he has not time to acquire the most superficial acquaintance. No elaborate ruse would be needed to obtain his signature for some matter which would raise the greatest objections. What

[1] *L'Administration de la France: les fonctionnaires* (1908), page 110.

errors, what stupidities and iniquities the most intelligent and upright man might authorize!" The official says to the minister, not in words, but in his very attitude: "Here is an order which you have not given; it refers to matters which, according to all appearances, you know nothing about. We conceived it before your advent; we will execute it after your departure. But we need your signature and, without it, can do nothing." [1]

Proposed control of departments by the permanent officials.

The legal situation is evidently anomalous. The minister must sign everything and assume the responsibility. Yet he does not know what he is signing; for it would take hours to master the contents of a single important paper. He regulates the personnel. Yet in a few brief months of office, before he has even familiarized himself with the business of the department, how can he decide wisely upon administrative reforms or upon questions affecting the personnel under him? There is an unmistakable movement in France to reduce the minister's authority or at least to bring the theory of his position into closer relation with actualities.[2] He has neither the time nor the knowledge to administer directly. Parliament, the organ which formulates the public

[1] Robert de Jouvenal quoted in de Lanessan, *La Crise de la République*, page 288.

[2] Hauriou, *Principes de droit public* (1910), page 489, and *Précis de droit administratif* (1914), page 145; Duguit, *op. cit.*, Vol. I, page 460 *et seq.*

policies, put him in office, not to execute those policies, but to supervise their execution; to watch the working of the administrative machine, to remove its defects, and to keep it always at a high level of efficiency. He should be, says Chardon, not one twelfth of a king or emperor, but a mere controller-general. Indeed the syndicalists actually propose to suppress the minister entirely and to substitute collective management by the permanent officials. This proposal, though in a modified form, has found support among publicists of sound judgment and eminent standing who believe that with the decay of the conception of sovereignty and with the steady growth of technical public services it is bound to be accepted. It seems, says Léon Duguit,[1] "to furnish the altogether natural solution of one of the gravest problems which our modern societies face and which may be formulated thus: how to harmonize the constant and necessary increase in the number of public services with the protection of the individual against the omnipotence of his rulers and with the free development of individual energies. . . . If the rulers exploited all these services directly or by agents absolutely dependent upon themselves, their power would become formidable. Economic forces would crush the individual."

What is this syndicalist system which would supplant the minister? It would apply to the

[1] *Op. cit.*, Vol. I, page 465.

technical services (education, posts, railroads, etc.), not to those which provide for internal security and protection from foreign dangers. Control by the government would be fully guaranteed and maintained. The government would be able to intervene to insure the proper functioning of the service and due respect for the law. It would have the right to approve or disapprove, the right to annul any act which violated the law; and while the corporate group of permanent civil servants would conduct the service, acting in obedience to chiefs elected by themselves and profiting in some degree from the results of careful management, they would be liable individually and collectively for mistakes and derelictions. The first tentative steps have been taken. Representatives of the permanent officials already have a voice in questions of promotion and discipline. But whatever the future has in store, no considerable breach has yet been made in the existing system.

How this would operate

The minister, occupied with political duties as a parliamentary leader and with executive duties as head of a ministry, cannot carry his burden alone. Nor can he depend altogether upon the permanent officials, because that would mean confiding control to those who are to be controlled. He must have as lieutenants men who enjoy his absolute confidence and share his ideas. The undersecretaries do not meet these requirements. Aside from the fact that they exist only by way

Departmental organization: (1) the cabinet

of exception (being attached to the four or five busiest departments), they are not intended to act as general assistants to the ministers. They are rather ministers of a second grade, assigned in any given department to some particular branch of administration which separates itself naturally from the rest. The men who assist and advise the minister, who act as the indispensable intermediaries between him and the permanent staff, form what is known as the cabinet. The cabinet always includes a chief, an assistant chief, a secretary, and several attachés. The minister, in making these appointments, is subject to no limiting civil service rules; in view of his confidential relationship with the cabinet, restrictions of any kind would be out of place. Sometimes the minister chooses the cabinet chief from his own family: the future President Casimir-Périer entered public life in that way when his father was minister of the interior. More often, because mature experience and tested judgment are required, his choice falls upon some permanent official of high rank. The attachés are young men who, having just taken their law degree or completed their studies at the *École des sciences politiques*, are anxious to make a government career. It is not the salary that attracts them; for there is usually no salary. They like the position because of the prestige which it confers, the future possibilities it holds in store. There is the liveliest competition

for appointment. In no other way can an inexperienced young man suddenly assume importance and bear a part, however humble it may be, in shaping the destinies of the country. He accompanies the minister on special trains; he drives to the unveiling of a monument or the opening of an exposition, surrounded by military pomp and display. The cabinet incarnates the authority of the minister. It lives his life, it shares his fortunes: an unstable situation, but a privileged one. And before the minister descends from office he makes it a point to find for the members of his cabinet desirable places in the permanent service, places which are opened to them by his personal intervention, by special decrees (if necessary) suspending the ordinary rules that govern appointments. The cabinet has been much criticized in recent years, partly because inexperienced attachés show a meddlesome disposition which the permanent officials resent, partly because the minister, responding to pressure, appoints an excessive number of attachés and later procures for them civil service posts that they are not qualified to fill.

(2) the *directions* or services

The minister and his cabinet are political officers. Their tenure is dependent upon the will of Parliament, the policy-determining organ; and they give effect to the will of Parliament by issuing orders to the permanent staff. The highest rank in the permanent staff is held by the directors, the chiefs of the four or five *direc-*

tions or services into which each ministry is divided. In view of the recurring ministerial crises and the consequent difficulty of maintaining continuity and tradition, it seems unfortunate that the different services are no longer correlated, as they used to be, under a single permanent chief;[1] but the directors meet together occasionally as a "council of directors," with the minister as chairman, to consider the general business of the department. They sit on many of the advisory commissions which coöperate in administrative work.[2] When the departmental budget is before Parliament, the minister appoints them to assist in the debates as "government commissioners." They sit in the Council of State as councilors in special service.[3] But their energies are chiefly given to supervising the labors of the four or five bureaux which compose each *direction*. The director, when any question is referred to him by

(3) the bureaux

[1] Note the opinion of Jules Méline in *Revue hebdomadaire*, Vol. III (1911), page 18 *et seq.*

[2] These commissions are an excellent feature of French administration; they bring together political, administrative, and lay elements in useful coöperation. They are for the most part technical bodies to which matters are referred for advice, some being appointed by decree or ministerial order and some (like the superior council of public instruction) being elected. The number connected with each ministry varies from five to forty-three. See the full list in the *Almanach national.*

[3] Not all the directors, but an aggregate of twenty-one drawn from the different ministries. For the Council of State see Chapter XI.

the minister's cabinet, examines it and transmits it, with instructions, to the competent bureau chief. The bureau is the fundamental unit in the administrative machine. Everything passes through its hands; and while the minister is presumed to make the decisions, he does so on the basis of information furnished by the bureau or in conformity with the specific solutions it suggests. Being so much occupied with political duties and so unfamiliar with the details of departmental business, he finds himself at a disadvantage in dealing with the experts. Sometimes they quite escape from his control. Camille Pelletan, minister of marine under Combes, complained that the bureaux blocked his projects of reform. "In the place of a parliament which makes the ministers, they in turn regulating the action of the bureaux," he declared, "we have bureaux which regulate the action of the ministers and through them give impetus to parliament." [1]

Civil-service rules in the central services

The minister cannot interfere arbitrarily with the organization and personnel of the bureaux. The rules that govern such matters as appointment, promotion, discipline, and salary are established not by simple ministerial orders (*arrêtés*), but by ordinances of public administration which are issued in the council of ministers and submitted to the Council of State for its opinion. In other words, the minister can alter these rules or suspend them only by a special procedure en-

[1] Noëll, *op. cit.*, page 112.

tailing delay, publicity, and possible criticism. Patronage exists, but in a restricted, attenuated form. The employees are grouped into grades and classified within the grades according to the salaries they receive. For the most part appointments are made by competitive examination, but in the lower grades, under a law of 1905, places are reserved for non-commissioned officers who have served ten years in the army and have been recommended by a special committee in the ministry of war.[1] In promoting from grade to grade and from class to class the minister is limited to the names appearing on the annual promotion list, a list prepared by the council of directors[2] in conformity with conditions laid down by decree. Thus an official can normally pass into a higher grade only after a minimum service of five years.[3] Measures of discipline may take the form of reprimand, removal from the promotion list, reduction in class or grade, or dismissal. In every case the accused official may demand a statement of the charges against him; and, if the charges are serious, he has the right to appear before the council of directors (including, for this purpose, two officials of his own grade) and to present testimony to controvert the charges.[4] For various reasons places in the

[1] *Id.*, page 147.

[2] That is, by the heads of the several *directions* or services in the department acting in concert.

[3] *Id.*, page 160 *et seq.* [4] *Id.*, page 165.

ministries are highly valued. They carry with them residence in Paris, something of a social position, security of tenure, and ultimately a pension. Nor are the hours of labor oppressive — six or seven a day, with a vacation of two or four weeks on full pay. These circumstances help to explain the smallness of the salaries. The directors get from $2400 to $4000; the bureau chiefs, $1200 to $2400; employees in the two lowest grades (who usually draw in addition a small army pension) $420 to $960.[1]

Pensions

It should be held in mind that state officials, whether in the central services at Paris or in the exterior services, have enjoyed since 1853 the advantages of a generous pension system.[2] The cost is partly defrayed by an annual assessment of five per cent on salaries and partly by a charge on the national budget. The law distinguishes between sedentary and active employment; officials retire in the first case at sixty after thirty years of service, in the second case at fifty after twenty-five years of service. These provisions are not rigidly applied. The Council of State, in adjusting individual claims, has developed a humane and liberal system of law. It has authorized the payment of pensions where an official had served the required period without reaching the age limit and where an official,

[1] Noëll, page 155.

[2] On this subject see Hauriou, *Précis de droit administratif* (1914), page 652 *et seq.*

being seriously injured in the discharge of his duties, lacked both age and service requirements. The amount of the pension is based on the average salary received in the last six years; the claimant receives one-sixtieth of this average for each year of service with a possible maximum of three fourths of the average. Certain officials, because of the instability of their positions, may claim pensions without making any contributions, the prefects being included in this class. Laborers come under the workingmen's pension law of 1910. No one questions the advisability of granting pensions; even in private employment it is becoming the rule. If the system were abolished, the state would have to increase salaries; for officials consider the pension in reckoning the size of their salaries. The supreme advantage is that men who have passed the age of usefulness can be retired without being reduced to penury and that young men can consequently look forward to more rapid promotion.

Civil-service rules in the exterior services

The central services include only a small fraction of the government employees, a few thousands of clerks as compared with the hundreds of thousands engaged in the exterior services. The laws of 1882 and 1900 which, to a limited extent, protect officials of the central services from arbitrary treatment do not apply to the exterior services. Only in the case of the army and navy, the judiciary (which is considered in the last chapter), and university professors have laws



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been enacted to establish security of tenure and freedom from political influence. Professors cannot be suspended or removed unless the decision of the local university council is confirmed by a two thirds vote of the superior council of public instruction.[1] But the absence of legal regulation does not imply absolute dependence upon the caprice of the politicians. By decrees or ministerial orders a fairly coherent merit system has begun to take shape. While in theory the minister continues to wield a despotic authority, he is checked at every turn by decrees which he has the power to suspend or supersede, but which he hesitates to touch unless the political necessity is great. Thus appointments are normally made under a system of competitive examinations. Promotions are made partly by seniority, partly by choice. As with the central services, the minister must confine his choice to the names appearing on the annual promotion list compiled by a council which (in some services) includes members elected by the officials themselves.[2] Similar councils have been established to deal with questions of discipline.[3] They have developed forms of procedure which invest them with the dignity of administrative courts. While

[1] Hauriou, *op. cit.*, page 642 *et seq.*; Duguit, *Traité*, Vol. I, page 497 *et seq.*

[2] Georges Cahen, *Les Fonctionnaires: leur action corporative* (1911), pages 227 and 251.

[3] *Id.*, pages 231–235; Duguit, *op. cit.*, Vol. I, page 505.

the minister is not legally bound by their findings, he usually accepts them without modification. In the postal service the accused official may have access to the record of the charges against him at least three days before the council meets and may be defended by an attorney or by another official of the same grade. The minister cannot impose a higher penalty than the council fixes. These are substantial rights; but the postal employees demand still more. They demand that the elective members of the council should equal in number the appointed members, that the proceedings should be public, and that the reasons for the decision should be given. The most severe disciplinary measure is removal, which carries with it the loss of pension rights. Under the decisions of the Council of State an employee can be removed only by the authority which made the appointment and in the same form. If no formal irregularity exists, the act of removal cannot be annulled; but where the official has been removed unjustly or abruptly and for no fault of his own, the Council of State has in recent years (since 1903) conceded an indemnity.

Their defects

It appears, then, that under the normal functioning of the civil service the official has a fairly secure and independent position. But abuses exist; and they attract all the more attention because they stand out as exceptions to an ideal which has been so nearly achieved. The minister

who wishes to find places for his adherents is confronted by no statutory obstacles. Should he deliberately override the rules, his appointments may be attacked before the Council of State and annulled as in excess of power; and this would be possible even if the rules were of his own making. But the course he usually pursues is open to no legal objection. The decrees and orders which regulate the civil service may be suspended by other decrees and orders. In one ministry the rules were thus set aside ten times in four years to make room for cabinet attachés. Instances of favoritism are numerous.[1] "Most of the high places in the administration," M. Steeg declared in Parliament,[2] "and always those which are the least onerous and the best paid, are filled, now as formerly, neither by the senior officials nor by those who have demonstrated their intelligence, activity, and competence. They go to the young attachés who, after having elegantly decorated the minister's anteroom, are established in the best posts." While favoritism is the chief subject of complaint, it is by no means the only one. The salaries are too low. "A large number of minor officials do not get three francs a day," says Georges Cahen.[3] "A teacher with a family

[1] Lefas, *op. cit.*, pages 62–68; Georges Cahen, *op. cit.*, page 20 *et seq.;* Noëll, *op. cit.*, note, pages 50–51; Chardon, *op. cit.*, pages 147–148.

[2] Quoted in Lefas, page 64.

[3] *Op. cit.*, page 17.

must live on 1200 francs." Pierre Baudin, who has served as minister of marine and minister of public works, wrote in 1912: [1] "The French state has too many underpaid officials. Few servants, but servants who work and who are well paid — such should be the rule of conduct for the modern state. Unhappily we are far from that ideal. We maintain a multitude of employees who do too little work and receive too little pay. Our public workshops, such as those of the marine, are overcrowded with workmen whose salaries are insufficient and whose mechanical equipment is mediocre."

Agitation for a civil-service law

The officials demand a higher scale of salaries; but they are still more insistent in pressing for complete emancipation from the interference of politicians, for a stable condition which will definitely fix their rights and duties. They urge the government to enact a civil-service law; and they expect that law to provide for appointment by competitive examination, automatic promotion by seniority, and discipline administered under settled rules by a council which should contain, besides high officials, a judicial element and representatives elected by the lower grades.[2] The ministers have been reluctant to grant these demands. They cling jealously to the patronage that remains in their hands and with respect to salaries content themselves with replying that

[1] Quoted in Lefas, page 53.

[2] See the detailed discussion in Lefas, *op. cit.*, pages 95–136.

even a small increase would in the aggregate lay a heavy burden upon the national budget. On the other hand the officials are so numerous and so well organized that their political action cannot be taken lightly by the government. At the opening of the century they formed professional associations which at the time of their federation in 1905 had a membership of some two hundred thousand.[1] They sought by every legal means to safeguard the interests of their members. They succeeded in having improper appointments annulled by the Council of State. In no uncertain tones they formulated demands for legislation. The failure of the government to meet these demands set loose a new and menacing agitation.

Syndicalism in the public services

Syndicalism had spread from private industry to public industry before the close of the nineteenth century. First the workmen engaged in the manufacture of tobacco and matches (state monopolies) organized; then the postal employees. The formation of syndicates was at that time illegal and, according to the leading authorities,[2] remained so (for government em-

[1] Georges Cahen, *op. cit.*, pages 109–110; Lefas, *op. cit.*, pages 150–159. According to the latter there were over six hundred associations in 1913 with about four hundred thousand members.

[2] Hauriou, *op. cit.*, pages 647–648; Duguit, *Traité*, Vol. I, page 514. The latter says in another place (*Le Droit social*, 131): "No officials of any kind can form a syndicate. . . . This is beyond question."

ployees) after the passage of the Associations Law of 1901. Their avowed purpose, which is to regulate the government services by resorting to the strike, conflicts with certain provisions of the penal code. But while the ministers checked the movement in some cases (the school teachers in 1887, the railroad employees in 1894), they acquiesced in others. In 1902 Camille Pelletan, the minister of marine, allowed the arsenal workers to organize. Three or four years later the professional associations, exasperated over the dilatory tactics of the government, began to transform themselves into syndicates and enter into alliance with the General Federation of Labor. The school teachers held a great syndicalist congress in Paris early in 1906. The first practical manifestation of the new spirit occurred in 1904 when the arsenal workers struck. Pelletan announced that those who did not return to work would lose their places. His threats had no effect; and finally the men succeeded in obtaining substantial concessions, the eight-hour day included.[1] Two strikes of postal employees followed in 1906 and 1909: the first, confined to Paris, was broken by the use of soldiers in distributing the mail; the second, affecting the whole postal service, was successful. Finally, in the autumn of 1910, came the railroad strike which, by interrupting the transportation of foodstuffs, affected the interests

[1] For the strikes of 1906–1910 and the legal and practical questions involved see Lefas, *op. cit.*, pages 175–210.

of the whole community. There was some rioting and destruction of property. But the prime minister, Aristide Briand, braving the anger of the Socialist party, called the strikers into military service and thus averted the crisis.

Attitude of Aristide Briand

Briand's resolute attitude had a far-reaching effect. It not only ended the railroad strike, but it also discouraged the malcontents in other public services. For the moment syndicalism faltered. The original impulse seemed to be spent. But if the government had at last come to the point of opposing force to force, the disorders of the past few years had shown the necessity of administrative reform. Briand himself fully appreciated the situation. "Why be astonished at the growing discontent of the officials?" he had asked in 1906. "In their discouragement they are turning toward the workingmen; they perceive that, by uniting in syndicates, the workingmen have been able to defend their interests against their more powerful employers. . . . The remedy lies neither in menace nor in persecution." [1] He believed that the grievances of the officials should be satisfied by legislation. Since that time various bills have been before the Chamber of Deputies.[2] But final action has been delayed by the disagreements between the ministers and the legislative committees, by the recurring cabinet crises with conse-

[1] Quoted in Georges Cahen, *op. cit.*, page 124.

[2] For the details see Lefas, *op. cit.*, pages 298–379.

quent shifts in policy, and by the emergence of other important questions, such as electoral reform and military service. From the outbreak of the war the energies of the government were completely absorbed by new problems.

CHAPTER V

THE SENATE

The scope of parliamentary powers

FROM the standpoint of its powers the French Parliament enjoys a much freer range of action than the American Congress. True, it is limited by a written constitution. But that constitution, which does little more than describe the framework of government, diverts no authority from the central organs in the interests of local areas or of personal or property rights; and since the courts may not question the validity of a statute, even a statute manifestly in conflict with the constitution, Parliament, after all, determines finally the extent of its own powers. It may also, by a very simple process, amend the constitution.

Senate a monarchist institution

Parliament is a bicameral body, with a Chamber of Deputies sitting in the Palais Bourbon and a Senate sitting in the Luxembourg. This bicameral system does not accord with Republican traditions, for the First and Second Republics, like the Third Republic down to 1876, were governed by single chambers. But to the monarchists in the National Assembly an upper house, sheltered from the direct play of universal suffrage, seemed essential as a barrier to democracy and as a means of safeguarding their future in-

terests. They refused to settle anything, even the continuing form of government, until the existence of a conservative Senate had been assured. It is significant that the constitutional law of February 24, adopted before any other part of the constitution, dealt exclusively with the upper house and determined matters of detail which, in the case of the Chamber of Deputies, were left to statutory regulation. "The Constitution of 1875," as M. de Belcastel said,[1] "is first of all a Senate."

Radicals accept it

That the Republicans gave way before this insistence illustrates the spirit of compromise which animated the assembly. The Right and Left Centers, it will be remembered, arranged something in the nature of a treaty involving sacrifices on both sides; and the Left, following the advice of Gambetta, made the Republic possible by accepting a second chamber.[2] The Radicals alone held aloof. For the next quarter of a century they demanded the abolition of the Senate. That the party has experienced a change of heart in recent years, however, is seen in the silence of its national platforms on this point and in the tone of deference which its newspapers

[1] J. Barthélemy, "*Les Résistances du Sénat*," *Revue du droit publique*, Vol. XXX (1913), page 373.

[2] Gambetta, who had earlier led the Republican opposition to a second chamber, accepted it in 1875 on the ground of expediency and justified it in 1882 as a necessary feature of democratic government. See Barthélemy, *op. cit.*, page 375.

employ when alluding to the Senate. The Radicals like the Senate because they control it. In 1914 more than half the members (167 of 300) belonged to their group,[1] these including such prominent leaders as Léon Bourgeois (who fought the Senate when premier in 1896), Clemenceau, Pelletan, Peytral, Combes, Doumergue, Pams, Sarrien, and Steeg. The elections of 1920 reduced their numbers but slightly. Antonin Dubost, who once wrote a book against the Senate, was for years its president; Léon Bourgeois succeeded him in 1920. Nowadays the Senate is hardly less radical than the Chamber and meets with constant criticism in such moderate newspapers as the *Temps* and *Débats*.

Senate was intended to restrain radicalism

But the monarchists of 1875 intended the Senate to serve as a bulwark of conservatism and to impose restraints upon the rashness and radicalism of the other house. This purpose found expression in various ways. To ensure deliberative calm the membership was fixed at 300 (it has now been fixed at 314)[2] or approximately half that of the Chamber of Deputies: a wise arrangement and one which has contributed to

[1] Samuel et Bonet-Maury, *Les Parlementaires français* (1914). See table of senate groups at end of the volume. The Radicals form the Democratic Left of the Senate.

[2] The law of October 19, 1919, which divided Alsace-Lorraine into the departments of the Upper Rhine, the Lower Rhine, and the Moselle, assigned to these departments respectively four, five, and five seats in the Senate.

the decorum of procedure. But it places the Senate at a disadvantage when the two chambers unite in national assembly to choose a President; and this inferiority encourages a spirit of revenge. Thus, in 1913, when Raymond Poincaré was elected in the face of bitter opposition from a majority of the Senate, the Radical-Socialists retaliated almost immediately by rejecting Briand's electoral reform bill which the Chamber had adopted. Several days before the vote the announcement was made that 162 senators had pledged themselves to this course. Afterwards Briand's eloquence and his demand for a vote of confidence fell on deaf ears.

Its original structure

The constitution originally divided the members of the Senate into two categories. A quarter of them, chosen by the National Assembly, were to sit for life, the Senate itself filling vacancies due to death, resignation, or other cause. "The majority was anxious," says Esmein,[1] "to assure the executive power of a permanent support in the Senate, which would not depend upon the shifting currents of public opinion: the seventy-five were to be this unshakable rock." If the monarchists had worked together, they could have secured every one of the seventy-five; but a cleavage in their ranks enabled the Republicans, with the help of Legitimist votes, to secure more than two thirds of them and thus defeat the purpose for which the life senatorships had been

[1] *Éléments de droit constitutionnel* (1914), page 917.

established. The other seats, 225 in number, were distributed among the departments and colonies with some regard to population, the maximum quota being five (for the Seine and Nord) and the minimum one. The colonies received seven seats.[1] The National Assembly had some difficulty in deciding on the system of election. At one time monarchist dissensions made it possible for the Assembly to adopt, by a narrow majority, direct universal suffrage; but Marshal MacMahon demanded a reconsideration of the vote. The ultimate solution was suggested by the method then employed in the election of United States senators. An electoral college in each department took the place of the state legislature under the American plan. The electoral college included four different elements: (1) the deputies sitting for districts within the department; (2) the general councilors, who constitute the departmental legislature; (3) the councilors of each arrondissement (or subordinate division of the department); and (4) one delegate chosen by each communal council. This scheme was admirably suited to serve the interests of the Right. It left control in the hands of the conservative rural communes. The deputies and councilors, proceeding directly from universal suffrage, formed less than a sixth of the senatorial electors; the thirty-six thousand communes of France, each represented by a single delegate

[1] Constitutional law of February 24, Art. 2.

whether its population was five hundred or fifty thousand, determined the character of the Senate which became, according to Gambetta's phrase, "the grand council of the communes." Equal representation of the communes as social groups had been shrewdly devised. "The desire was to make the Senate profoundly conservative by giving the preponderance in the electoral college to the rural communes which were by far the most numerous and whose tendencies were known." [1]

Modifications in 1884

The Republicans, while generally becoming reconciled to the Senate as a permanent organ of government, condemned as undemocratic both the life mandates and the equal representation of the communes. After 1879, when they first secured a majority in the Senate, they were in a position to modify its structure; and, by a constitutional amendment of 1884, Parliament was left free to deal with the whole subject.[2] A reform statute was passed in the same year.[3] It provided that the life senatorships should be abolished as each became vacant (the last one lapsed during the late war) and that the seventy-five seats should be distributed by lot among

[1] Esmein, *op. cit.*, page 913; and note the observations of Duguit, *Traité de droit constitutionnel*, Vol. II, page 243.

[2] The first seven articles of the constitutional law of February 24 were deprived of their constitutional character.

[3] December 9. For the text see Dodd, *Modern Constitutions*.

the most populous departments, the Seine receiving an increase of five, the Nord three, and so on.[1] The statute also changed the basis of communal representation. While abandoning the principle of equality because of the conservative influence of landed property in the rural communes, it did not go so far as to substitute the principle of population; moderate Republicans feared the growing class-consciousness of the workingmen in large centers. The idea was to give a preponderant voice to communes of moderate size (four or five thousand population), these being strongholds of the middle bourgeoisie.[2] The number of delegates now varies with the size of the council which, under the municipal code of 1884 (Article 10), depends to some extent upon the size of the commune. Thus communes with a population of 500 or less have a council of ten members and send one delegate to the electoral college; communes with a population of more than 60,000 send the maximum of 24 delegates. The inequalities of this system have been much criticized. Joseph Barthélemy, for instance, has pointed out[3] that while Marseilles with over 400,000 inhabitants has 24 delegates, 17 other towns in the same department with an aggregate population of 30,000 have the same representa-

[1] The institution of life senatorships had, however, much to recommend it. See Duguit, *op. cit.*, Vol. II, page 247.

[2] Barthélemy, *op. cit.*, page 389.

[3] *Op. cit.*, page 389.

tion; and that Lille with over 200,000 inhabitants has the same number of delegates as 24 little towns with an aggregate population of 4000. But the inequalites are less striking than they were under the original scheme.[1]

Senate not representative of current public opinion

Senators are elected for nine years, but not all are elected at once. Every three years, dating from 1876, the term of one third of the Senators expires. This practice of partial elections, which was applied to the American Senate nearly a hundred years earlier, tends to preserve continuity, but it also tends to make the Senate less responsive to the current opinion of the voters. The indirect system of election emphasizes this irresponsiveness. A senator who is drawing near to the end of his nine-year term is more than nine years from the voters, because the members of the electoral college may themselves have been nearing the end of a term of four years (in the case of deputies and municipal councilors) or six years (in the case of councilors of the department and arrondissements). The Senate therefore represents old ideas. In 1913, when it overthrew Aristide Briand, it represented not the new spirit of France, the spirit of national unity and conciliation, but the Radical-Socialist doctrines

[1] In 1896 and at various times since then bills have been introduced providing for the direct election of the Senate by universal suffrage. The bill of 1896 passed the Chamber, but the others were not brought to debate. See Esmein, *op. cit.*, page 926, and Duguit, *op. cit.*, Vol. II, page 246.

typified by Combes (premier from 1902 to 1905). That the country had grown tired of these doctrines had just been demonstrated by the election of Raymond Poincaré to the presidency and by the enthusiasm with which the country greeted him. The strength of the Radical-Socialist party in the Senate reflects the strength which it possessed in the country ten or fifteen years ago.

Election of senators

Candidates for the Senate must be French citizens forty years of age enjoying full political and civil rights. The statutes also lay down certain absolute disqualifications, these applying to persons who belong to the former royal families of France, who have not satisfied the requirements of the military law, and (with exceptions) who are engaged in active service with the army or navy; and there are also "relative" disqualifications applying to a number of officials (such as prefects and school inspectors) who may not be chosen from the department where their public duties are carried on and where they might exert official pressure. Finally the mandate is declared incompatible with the holding of certain offices (such as councilor of state, prefect, judge); in other words, the senator must, after his election, resign the office or vacate his seat. A candidate may offer himself simultaneously in several departments, but, if successful in more than one, he must make his choice between them. As a matter of fact multiple candidacies are infrequent. Local influences, the claims of

the party organization in each of the districts (arrondissements) have to be considered; and it is often quite impossible to make headway against the political custom of rotation by which each district in turn asserts its right to fill the vacancy. "How many senatorial elections could be cited," Joseph Barthélemy observes,[1] "in which the quarrels were not conflicts of ideas or even personal rivalries, but above all geographical disputes." The elections are not altogether free from corruption. While there have been no such scandals as occasionally marked the choice of United States senators before the adoption of the Seventeenth Amendment, complaints of official pressure are frequently heard. As the delegates are few in number and known long beforehand, the centralized administration has many means of action through the prefect. The mayor, who is almost always a delegate from his commune, needs the prefect's support and therefore listens to his advice;[2] a school teacher, who has been removed for misconduct, is offered reinstatement if he will resign his place as delegate.[3] But the chief plague is promises, promises of places and favors and decorations, for the elector himself or for his friends. The vulgar forms of bribery are rarely employed, though cases have occurred where a candidate has paid hotel bills, furnished theater tickets, etc.

[1] *Op. cit.*, page 393.
[2] Barthélemy, *op. cit.*, page 391. [3] *Id.*, page 390.

Eminent politicians chosen

The personnel of the Senate is unquestionably superior to that of the Chamber of Deputies.[1] Usually those who reach the Senate have demonstrated their capacity in some other political field, most of them having served as mayors or general councilors at least;[2] and of late the Chamber of Deputies has been the most prolific field. The deputies look upon the Senate, with its nine-year mandate and the less exacting, less costly campaign for election, as a comfortable retreat. It is very often the leading politicians who emigrate — in recent years Bourgeois, Méline, Charles Dupuy, Clemenceau, Sarrien, Ribot, all of them former premiers. "The result is that the Chamber of Deputies has not ceased to suffer from a species of inverse selection," says Yves Guyot. "No body could retain its vigor under such a system. The most experienced men have left; the composition of the Chamber of Deputies has steadily grown weaker and weaker, while it needed strength more than ever before to fight against the demagogic spurts which have so often sent to the Chamber of Deputies men without learning, without convictions, without any program other than that of pandering, when elected, to the prejudices which led to their election."[3]

[1] *Id.*, page 393 *et seq.*; Yves Guyot, "*The Relations between the French Senate and the Chamber of Deputies*," *Contemporary Review*, Vol. XCVII (Feb., 1910), page 148.

[2] Barthélemy, page 394.

[3] *Op. cit.*, page 148.

The cream of the Chamber is skimmed; the leaders leave while in the plenitude of their powers. In their new situation, instead of guiding and directing the government, they are limited to the humbler rôle of revision; for the Senate, in spite of its superior personnel, is decidedly less influential than the Chamber. It has inherited from preceding upper houses the privilege of being ignored.[1]

Subordination of the Senate

The National Assembly did not contemplate any such subordination. Except in regard to revenue and supply it gave the two houses exactly the same legislative powers, and, although "money bills shall first be introduced in and passed by the Chamber of Deputies," [2] this clause would not seem to be a more effective check than the similar clause which theoretically deprives the United States Senate of the power to initiate revenue measures. As to control over the cabinet, the constitution provides that the ministers shall be responsible to the chambers. Even if the meaning of this language is open to doubt, the Senate has the same means of enforcing responsibility as the Chamber has. It can interpellate the ministers; it can hold formal inquiries into their conduct of executive business; it can refuse supplies, as it did in 1896. Moreover, it has an important advantage in the fact that only with its consent can the ministers dissolve the Chamber of Deputies and appeal to the electorate

[1] J. Barthélemy, *op. cit.*, page 371.

[2] Constitutional law of February 24, Art. 8.

against opposition in either house. A cabinet that is unable to carry measures through the Senate must acquiesce or resign, no matter what its majority may be in the Chamber of Deputies; and if it resigns, the new cabinet will acquiesce, as happened when Méline succeeded Bourgeois in 1896 and when Barthou succeeded Briand in 1913. Evidently the weakness of the Senate does not depend upon the express provisions of the constitution, nor will the precedents of earlier régimes suffice to explain it. It is due first of all to the fact that the Chamber of Deputies, as the direct offspring of universal suffrage, is invested with a peculiar prestige, an inherited sanctity which not all its shortcomings can wash away; and in the second place to the fact that cabinet government requires the ascendancy of one chamber because ministers cannot obey at the same time two different masters with conflicting wills. Thus democratic principles and practical necessity conspire to restrict the ambitions of the Senate.

Tactics employed in opposing Chamber

Not that the Senate has been reduced to impotence. It has often found means of thwarting the Chamber without engaging in open conflict; by discreet and cautious tactics it has accomplished results which, though mainly negative, have disconcerted and ruined cabinets. The most effective weapon is delay. The Chamber, spurred to action by popular agitation or political exigencies, hurries some bill to the Senate; and there, when a committee has at last been ap-

pointed to examine the measure, interminable delay follows, in the expectation that the Chamber, occupied with new concerns, will lose its enthusiasm and abandon its uncompromising attitude. Perhaps in the end leading politicians of the two houses will confer informally and make some agreement in which the Senate obtains its pound of flesh. Instances of dilatory tactics are innumerable. An income-tax bill, adopted by the Chamber in March, 1909, had not been reported from the Senate committee four years later;[1] the weekly-rest bill passed the Chamber in March, 1902, and the Senate in July, 1906; a pension bill, brought before the Senate in 1906, was shelved for four years.[2] These cases are mentioned to illustrate the social and economic outlook of the Senate. The majority is Radical-Socialist; it accepted without demur the anti-clerical policy of Combes; but at the same time it is capitalistic in sympathy, opposing advanced forms of taxation and all measures that look towards state socialism.[3] The Unified Socialists, in their platform of 1913, condemned the Senate as reactionary and hostile to the interests of the working class.[4] The policy of delay has never

[1] J. Barthélemy, *op. cit.*, page 402.

[2] See *Second Chambers in Practice*, papers printed in England by the Rainbow Circle in 1911, pages 7–11.

[3] Barthélemy, pages 398–405.

[4] In spite of their hostility to the Senate the Unified Socialists put forward candidates in the senatorial elections of 1920; one of these was successful.

been more determined or less pardonable than in the matter of electoral reform.[1] For nine years the Chamber sought to establish secret voting; and the Senate, by most discreditable maneuvers, by amendments which showed no consistency of principle, but only a desire to wreck the bill by indirect methods, prevented its enactment until 1913.

Ill effect upon legislation

The best friends of the bicameral system admit that such action on the part of the Senate has entailed unfortunate results. When the Senate modifies and mutilates bills and the Chamber, out of sheer lassitude, accepts the changes, defects and incoherencies are bound to appear in legislation.[2] Again, responsibility is dissipated. Deputies vote for some illusory or dangerous project, says Yves Guyot, "telling themselves and telling those who call their attention to the dangers of their action, 'It doesn't mean anything; don't attach any importance to it. The Senate will arrange all that.'" [3] The deputies, especially when the general election approaches, are anxious to produce an effect upon the voters. The temptation to satisfy extravagant and improper demands is particularly strong when, rightly or wrongly, the Senate is expected to interpose with its veto.

Conflicts over money bills

The most serious issue that has arisen between the chambers relates to revenue and supply. The language of the constitution is not explicit.

[1] Barthélemy, pages 398–401.

[2] *Id.*, page 406. [3] *Op. cit.*, page 149.

"Money bills," it says,[1] "shall be first introduced in and passed by the Chamber of Deputies." Does this mean that the Senate, having received a money bill, may proceed as with any other bill to amend it with absolute freedom? May it substitute a new measure and by persistence force the Chamber to give way? In law the question has never been settled, but out of the conflicts, which occurred frequently in the early days of the Republic, a practical adjustment has been reached.[2] The first conflict arose in 1876 when the Senate restored to the budget certain credits which the Chamber had refused. Gambetta, asserting that this was an exercise of initiative which the Senate did not possess in matters of finance, urged the rejection of the amendments. Only through fear that serious discord between the chambers might imperil the life of the young Republic did the deputies finally agree to effect a compromise. In subsequent years (1878, 1879, 1880, 1882) they resolutely and successfully denied the pretensions of the Senate, developing in this way the constitutional custom that has become known as "the doctrine of the last word" which requires the Senate to give way when the Chamber has acted upon the budget a second time. Gambetta, who wished to have this doctrine written into the constitution, described it in

[1] Law of February 24, Art. 8.

[2] See on this subject especially Eugène Pierre, *Traité de droit politique, électoral, et parlementaire*, Secs. 529–532.

these words: "When the remonstrances and observations of the Senate have once been presented to the Chamber, the right of the Senate is exhausted. The Chamber of Deputies enacts finally, says yes or no, accepts or rejects; and its vote is not open to appeal or reversal." [1] But while the Senate accepted the doctrine as a basis of action, it continued to claim in principle entire equality with the Chamber [2] and would consent to no abridgment of its pretended powers by constitutional amendment. This distinction between legal right and political expediency was clearly made by Senator Dauphin in 1885. "If the Chamber rejects our amendment, it is good policy, save in exceptional cases, that the Senate should not a second time reëstablish the credits. This is not a matter of law; the law is safe. I am not speaking of principles. I simply say that it is good policy." [3] The Chamber, on its side, does not dispute the right of the Senate, when passing the budget for the first time, to increase credits or to reinsert items rejected by the Chamber, provided only that this be done at the request of a minister. Whether the Senate could, with propriety, act upon its own initiative, seems uncertain. Antonin Dubost, reporter of the Senate finance committee, said in 1905: "Your commit-

[1] Pierre, *op. cit.*, Sec. 530.

[2] See in Pierre, *op. cit.* (Sec. 530), the argument presented by Senator Wallon, "the father of the constitution."

[3] Pierre, *op. cit.*, Sec. 532.

tee has already indicated that the right of raising credits, *at any rate within the limits requested by the government*, appears never to have been contested."

Professor Duguit thus summarizes the financial power of the Senate.[1] "In our opinion senators cannot propose to the Senate the increase of an appropriation which the Chamber has voted in the budget or in a separate bill, or *a fortiori* the reinsertion in the budget of an appropriation which the Chamber has refused. A new expenditure can never be authorized on the initiative of a senator. That is the essential rule. That rule would be violated if the Senate could, on the initiative of one of its members, increase or reëstablish an appropriation voted or refused by the Chamber. The Senate can, however, increase appropriations made by the Chamber or reëstablish appropriations refused by it when the proposal of increase or reëstablishment has been brought forward by the government and when the amount proposed to the Senate does not exceed the amount originally proposed to the Chamber. In this way the rule of priority and initiative is fully respected: the financial law has just been proposed to the Chamber and the initiative in increasing or reëstablishing appropriations has been taken not by a senator, but by the government. It is incontestable that the initiative of the Senate can be freely exercised in financial matters where it tends to reduce appropriations."

[1] *Manuel de droit constitutionnel* (3d ed., 1918), page 429.



SENATE CHAMBER DURING TRIAL OF JOSEPH CAILLAUX

It follows from what has been said that disagreements between the chambers over money bills are settled by the Chamber of Deputies. It has "the last word." In the case of other bills two courses are open. Either a conference committee may be appointed or the particular bill may be carried back and forth by the minister in charge of it until some common understanding has been reached.[1] The first method although it is the only one sanctioned by the rules of the chambers, has been employed only three times. Eugène Pierre, the great authority on parliamentary procedure, believes that it should be resorted to more frequently.[2]

The Senate as High Court

The Senate, like so many other second chambers, has judicial as well as legislative functions. It "may be constituted as a high court of justice to try either the President of the Republic or the ministers and to take cognizance of attempts upon the safety of the state." [3] The rather vague phrases of the constitution have left a great deal to the imagination and controversial subtlety of the jurists,[4] but at least the main features of the Senate's jurisdiction are tolerably clear. In the

[1] Pierre, *op. cit.*, supplement of 1914, Secs. 676–677; *Rules of the Chamber of Deputies* (1915), Nos. 107–109.

[2] *Id.*, supplement, Sec. 677.

[3] Constitutional law of February 24, Art. 9; see constitutional law of July 16 for further provisions.

[4] Some of the uncertain points are discussed by Esmein, *op. cit.*, pages 1054–1066, and Duguit, *op. cit.*, Vol. II, pages 396–415.

first place, the President and ministers are liable to impeachment, the Chamber preferring the charges, the Senate trying them. Different rules apply in the case of the President and of the ministers. Although the constitution declares that the President is responsible only when he commits high treason,[1] authorities agree that he may be brought to trial for any infraction of the criminal law;[2] but whether the charge involves treason or some less serious offense, the Senate has exclusive jurisdiction. On the other hand, according to the weight of opinion on a disputed point, ministers may be impeached only for felonies (*crimes*) committed in the performance of their duties;[3] and if the Chamber neglects to prefer charges, the ordinary procedure of criminal justice may be set in motion. In the second place, the Senate may try persons charged with making attempts upon the safety of the state. Such persons are not impeached; the initiative rests, not with the Chamber of Deputies, but with the cabinet, which issues a decree constituting the Senate as a court.[4] If proceedings

[1] Constitutional law of February 25, Art. 6.

[2] Duguit, *op. cit.*, Vol. II, page 399; Esmein, *op. cit.*, pages 784 and 787.

[3] Constitutional law of July 16, Art. 12. This clause is often mistranslated, the technical word *crime* being rendered as "offense" or "crime" instead of "felony." The procedure to be followed in impeachment trials is regulated by the law of January 5, 1918.

[4] Constitutional law of July 16, Art. 12.

have begun in the regular courts, however, and if, before the issuing of the decree, the "accusation chamber" has already laid the charges before the Court of Assizes,[1] the Senate loses jurisdiction.[2] The lawyers disagree as to what the constitution means by "attempts upon the safety of the state," but in 1889 and 1899 the Senate took the view that mere conspiracies unaccompanied by overt acts came within the scope of the phrase.[3]

[1] See *infra*, Chapter XII.

[2] Constitutional law of July 16, Art. 12.

[3] Duguit, *op. cit.*, Vol. II, page 403, dissents from this view; see also Esmein, *op. cit.*, page 1061 *et seq.* For the questions raised by the trial and conviction of Louis J. Malvy, see *supra*, page 80, note 3. Joseph Caillaux was convicted in April, 1920, of "commerce and correspondence with the enemy," being sentenced to 36 months' imprisonment with loss of political rights for ten years.

CHAPTER VI

THE CHAMBER OF DEPUTIES: ITS COMPOSITION

The suffrage

THE Chamber of Deputies is elected by universal suffrage.[1] Contrary to the practice which prevails in England, Germany, and other countries, the voting qualifications are the same for all elections — national, departmental, district, and municipal. These qualifications are by no means complex:[2] (1) French nationality, (2) male sex,[3] (3) the age of twenty-one years, (4) enjoyment of civil and political rights (these being lost permanently or temporarily upon conviction for certain specified crimes),[4] and (5) regis-

[1] Constitutional law of February 25, Art. 1.

[2] Regarding the suffrage and electoral procedure see Dalloz, *Manuel Electoral* (1910), an admirable handbook for popular use. The appendix contains all the decrees and laws relating to elections down to the time of publication. For the important laws of 1913 and 1914 see H. Gasser, *Manuel des élections politique* (1914). For the law of July 12, 1919, which establishes the general ticket with minority representation, see Appendix III at the end of this volume. Another useful book is Ch. Rabany, *Guide général des élections* (2d ed., 1912) which considers especially municipal elections.

[3] On May 20, 1919, the Chamber of Deputies voted to abolish the sex qualification, but the Senate did not concur.

[4] Dalloz, *op. cit.*, Secs. 152–203.

tration. Not all persons who possess the first four qualifications, however, have the right to appear on the voters' list. The applicant must have resided in the commune for six months before the 31st of March; or he must show that, notwithstanding residence elsewhere, the commune is his place of "true domicil";[1] or he must have paid direct taxes there for a period of five years, this being taken as evidence of local interest.[2]

Registration of voters

The register is a permanent list subject to an annual revision which proceeds simultaneously in all the communes of France.[3] The first steps are taken by an "administrative committee of revision" composed of the mayor, a nominee of the prefect, and a nominee of the communal council. This board, meeting behind closed doors and without the presence of party agents, corrects the list of the previous year in the light of such information as it may possess, removing the names of those who have migrated or died or lost political rights and adding the names of those who have become qualified by age or residence. Two copies of the revised list are prepared, one being sent to the prefect and the other deposited in the town hall where the public can examine it

[1] As in the case of a student who has attended college in another town.

[2] Dalloz, Secs. 204–229; and note that the law of July 29, 1913, has modified the old rule regarding direct taxes.

[3] Dalloz, *op. cit.*, Secs. 250–462.

for a period of three weeks (January 15 to February 4). To act upon the claims and objections of electors the board is then increased by two members, nominees of the municipal council, and becomes known as the "municipal committee of revision." It does not admit interested parties to its meetings, but sends them written notice of its decisions. Without any cost whatever these decisions may be appealed first to the justice of the peace, who must render judgment within ten days, and finally to the Court of Cassation which is allowed a period of two weeks. The lists close on March 31. This system of registration has obvious advantages. It places no burden upon the voter, as personal registration does. It involves no financial outlay, because the work is performed gratuitously by public officials and because the list of voters, instead of being printed in the American fashion, is usually written out in longhand. Of course there is some possibility that, in view of the method of appointment, partisan interests may dominate the registration board.

Objections to the district ticket: (1) unequal representation

Before the enactment of the new electoral law of 1919, the deputies were chosen by district ticket (*scrutin d'arrondissement*), that is, from single-member constituencies. Although this method of election was once almost universal and is still employed in the United States, Great Britain, and several other important countries, it seems destined everywhere to be supplanted by

some form of proportional representation with large constituencies.[1] It entails, indeed, obvious disadvantages. Since the voters in any given district are grouped into several antagonistic parties, only a fraction of them can be represented by the single deputy who is elected; from the standpoint of parliamentary representation the others cease to have any voice in the government.[2] And since, among a number of party candidates, the successful one needs to have, not an absolute majority of the votes, but simply more than any other candidate, a small minority may secure control of the district.[3] Where there are four or five candidates the winning group may not include much more than a quarter of the electorate. Statistics seem to show that on the average less than forty-five per cent of the voters have been represented in the Chamber of

[1] Before the war proportional representation had been adopted for national elections in Belgium, Denmark, Serbia, South Africa (Union Senate), and Sweden; and for certain local elections in other countries. Since the war it has been adopted in Austria (constituent assembly), France (partially), Germany (constituent assembly and legislature under the new constitution), Italy, New South Wales, Poland (constituent assembly), and Switzerland (national council).

[2] This argument overlooks the fact that party candidates, elected in other constituencies, represent the members of the party everywhere.

[3] The French election law required the holding of a second election in case no candidate obtained a clear majority; but in the second election a plurality sufficed.

Deputies since 1876.[1] Again, idealists have been much disturbed by the fact that the districts, which ought to be as equal each to each as the two triangles in Euclid's eighth proposition, have shown material variations. Thus (before the abolition of the *scrutin d'arrondissement* in 1919) the district of Barcelonnette in the Basses-Alpes had 13,648 inhabitants; the first district of the Seine had 112,098.[2] There were rotten boroughs in France.

(2) play of local influences

Unequal representation has not been the only ground of complaint. It is said that little districts make little deputies, men whose horizon rests upon the frontiers of their districts and whose conception of their office goes no further than service to the intriguing politicians who managed their election. They are sent to Paris to procure favors and subsidies; their return to Paris four years later (when the next election occurs) depends upon success in achieving this diplomatic mission. "The rôle of the French deputy," says Professor Garner,[3] "is today largely that of a sort of *chargé d'affaires* sent to Paris to see that his constituency obtains its share of the favors which the government has for distribution. Instead therefore of occupying himself with ques-

[1] J. W. Garner, *Electoral Reform in France*, *American Political Science Review*, Vol. VII (1913), pages 623–624.

[2] *Id.*, pages 622–623, where literature on the subject is cited.

[3] *Op. cit.*, page 617; and note the citation of French writers, pages 617–619.

tions of legislation of interest to the country as a whole he is engaged in playing the rôle of mendicant for his petty district. He spends his time in the ante-room of the ministers soliciting favors for his political supporters and grants for his *arrondissement.* The ministers, being dependent on the support of the deputies, naturally desire to keep on good terms with them, the importance of which is all the greater because ministerial tenure in France is very brief and uncertain. Under such conditions the deputy has become the political master of his circumscription; he dictates appointments and promotions, the conferring of decorations and the distribution of local favors generally. He speaks of 'my *arrondissement*' as though it were his fief, and of 'my prefect' as though that official were his vassal." Naturally the deputy views with apprehension all projects of administrative reform which contemplate the abolition of sinecures; he justifies the existence of subprefects whose duties are negligible, of judges who decide twenty or thirty cases a year, and of collectors who have nothing to collect. Sabatier calls the French system of government "deputantism," a mere perversion of the parliamentary system which has been developed in England. The play of local influences has perverted American assemblies in the same way; and at first glance it seems reasonable to hold the single-member district responsible. That such reasoning is superficial may be demonstrated

from the fact that in England, under the district ticket, the members of Parliament are almost completely free from local control; they are occupied with national issues and give whole-hearted support, or at least the appearance of it, to the policies of the party leader. Obviously, the subjection of the French deputy or the American representative to his constituents cannot be due to the method of election alone.

(3) government pressure

There is a third objection to the single-member district. Government pressure is easily applied. The whole weight of the centralized administration can be thrown into the campaign and, by the skillful use of patronage and promises, made to play an almost decisive part. In some degree this will explain why cabinets, though hurried to execution by the Chamber of Deputies every eight or ten months, have never been driven from office by the voters.[1] Perhaps it will also explain why the Radical-Socialist party, in the face of its apparent loss of public confidence, actually made gains in the elections of 1914; the Doumergue cabinet, besides controlling the election machinery, made good use of all its resources. "We do not know what a ministry can accomplish through its prefect in Paris," the *Journal des*

[1] The election of 1877 cannot be regarded as an exception. The de Broglie cabinet had been installed by MacMahon against the wishes of an overwhelming majority in the Chamber. See Chapter IX. Even so de Broglie managed slightly to reduce the Republican majority.

Débats observed;[1] "in large cities it is still possible to escape from the omnipotence of the administration. But in small towns and country districts the government can play the tyrant; it possesses those means of action that combined to produce the 'abject domination' of the Combes system and branded it as with a hot iron. A resolute cabinet can easily bring into line the inconstant, the timid, the hesitating, and some of them are to be found everywhere." The same newspaper describes the methods which are employed.[2] "Each week, and as a rule on Monday morning, M. René Renoult [minister of the interior] receives several prefects and discusses the political situation with them. The prefect gives his opinion on the chances of reëlection of such and such a deputy or on the dangers which face another. . . . When the minister and the prefects agree on the choice of official candidates, they decide also on the means of victory. Deputies offering themselves for reëlection or candidates backed by the government receive tobacco licenses and other favors which may be useful in winning votes. They even receive, it is said, pecuniary help; this at least was publicly admitted by a government candidate in the course of his campaign. . . . The official candidature has been perfected in these later years. The prefect and subprefect no longer hesitate to accompany the candidate in his campaign. They laud

[1] January 14, 1914. [2] February 20, 1914.

his merits; they predict his success; they inform the voters that he can render them signal services. This is a common practice and not in any way disguised."

Government influence declining

No doubt administrative influence has freer play in a small district electing one member than in a large district electing several members. But the difference is not considerable enough to be taken seriously as a ground for condemning the *scrutin d'arrondissement.* The remedy should be found, not in a change of the electoral system, but in the development of a healthy public opinion and in restrictive legislation applied directly to the abuse of official authority. Much has already been accomplished. Competitive examinations for appointment to the civil service and elaborate rules in the matter of promotions have withdrawn patronage from the government. Officials have acquired a large measure of independence, which they guard jealously from invasion. The prefects themselves, though subject to removal at the will of the ministers, may be of little value to a cabinet which has lately come to power through the shifting of party control in the Chamber; for the cabinet cannot always trust the prefects appointed by its adversaries to manage the elections in its interest, nor can it hope for better results by appointing new prefects unless these are familiar with the locality and possessed of the requisite local influence. Moreover, administrative pressure has begun to

rouse the resentment of the voters. "The more openly it is employed," observes Georges Lachapelle,[1] "the more indignation it provokes and the more dangerous it becomes for the deputy who makes improper use of it." It is dangerous for the government officials as well. The corrupt practices act of March 31, 1914,[2] provides that when a public official is convicted of bribery or undue influence the penalties prescribed in the act shall be doubled.

Substitutes for the district ticket: (1) the general ticket

Justly or unjustly, however, the single-member district has fallen into disrepute. It would have disappeared years ago had its opponents been united in support of an alternative. Formerly Republicans put their faith in the general ticket (*scrutin de liste*), that is, election at large of several members in districts of considerable size, each elector voting for as many candidates as there are seats to fill. This system was in force under the short-lived Second Republic and under the Third Republic during its earlier years, the district ticket being substituted by Napoleon III in 1852 because it gave freer play to the management of elections, and by the National Assembly in 1875 [3] because the monarchist majority favored it.[4] After the existing constitution had gone into

[1] *Journal des Débats*, February 20, 1914.

[2] Pierre, *op. cit.*, supplement, Sec. 292.

[3] Law of Nov. 30, 1875.

[4] See Magne, *Étude sur le scrutin de liste et le scrutin uninominal* (1895).

effect Gambetta led the Republicans in demanding a return to the general ticket. The single-member district he described as "the last fortress of the monarchists" and the Chamber of Deputies elected under such a plan as a "broken mirror" in which France could not recognize her own reflection. But cogent arguments could be offered on the other side: the fact that campaign expenses would be increased by the necessity of appealing to so large a group of electors; that the strongest party would win all the seats in any given constituency;[1] and that a candidate offering himself simultaneously in several districts would be able, by this means, to invoke the plebiscite and put himself forward as a Napoleonic dictator. Indeed the eloquence of Gambetta and his vigorous personality led many Republicans to fear that he aspired to a dictatorship. It was only in 1885, some two years after his death, that the general ticket was restored; and then the apprehension which Gambetta had inspired became stern reality during the notorious campaigns of General Boulanger. The Republicans, hurriedly recanting, restored the *scrutin d'arrondissement* (1889). But with the collapse of Boulangism many returned to their old faith and, through the medium of the Radical-Socialist

[1] Each party puts forward a list of candidates for all seats to be filled; the members of the party normally accept the list as it stands; and so if one of the candidates is elected, all will be.

party, have repeatedly endorsed the *scrutin de liste* during the last twenty years.[1] The Senate, under the inspiration of the same party, has twice adopted a bill establishing this system, first in 1913 and again in 1914.[2] But the Chamber of Deputies has committed itself to a different solution. Proportional representation has been brought forward as a remedy for the abuses that have revealed themselves under both the *scrutin d'arrondissement* and the *scrutin de liste* and, as the name implies, seeks to have each political group represented in the legislature according to its numerical strength. Nothing more definite may be said here because the objects of proportional representation may be attained by several different methods.[3] Nor in examining

(2) proportional representation

[1] A. Charpentier, *Le Parti Radical et Radical-Socialiste* (1913), Chap. III.

[2] For the text see Petitjean, "La Représentation proportionnelle devant les chambres françaises" (1915), pages 269–271.

[3] It may be observed that English-speaking countries have shown a decided preference for the "single transferable vote" under which the candidates of all parties are mingled on the ballot (usually in alphabetic order) and the voter expresses first, second, third, and perhaps further choices. Continental countries, on the other hand, always use the party list or ticket. Under the list system a voter may be permitted to vote for as many candidates as there are seats to fill and to select those candidates from different lists if he so desires. (Cf. the French law of 1919.) Usually, however, he can do no more than choose between the competing lists (as in Belgium or Italy); when he votes for a list, he even has to accept

the bills that have been reported to the Chamber of Deputies since 1905 can one discern a tendency to recognize the superior merits of any one method.[1] The law of 1919 takes the form of a compromise between the *scrutin de liste* and proportional representation. Strictly speaking, indeed, the measure that became law on July 12, 1919,[2] does not establish proportional representation at all. As will be shown in a moment, it takes the form of an uneven compromise between proportional representation and the *scrutin de liste*, giving to the former a very subordinate place.

Proportional representation before the Chamber

Proportional representation was first brought to the attention of the Chamber of Deputies in 1873. Occasionally during the next thirty years bills were introduced only to be ridiculed or ignored. But when, in 1905, the committee on universal suffrage made a report in favor of the system, its friends took heart and began an active propa-

the order in which the names appear (and in which the seats will be awarded) unless, as in Belgium, he is permitted at the same time to express a preference for some particular candidate on the list. Actually all methods of proportional representation provide for the election of several representatives in each district; the larger the number to be elected, the fairer will be the distribution of seats. In France each district is entitled to a minimum of three seats; in Italy, ten.

[1] The most useful treatment of proportional representation for the general reader is J. Humphrey's *Proportional Representation* (1911). For the history of the movement in France and a list of the best French books see Petitjean, *op. cit.*

[2] "A law . . . to establish the general ticket with proportional representation." For the text see Appendix III.

ganda through the country. After the election of 1906, when the propaganda had begun to have an effect upon public opinion, the committee devoted elaborate care to the perfecting of a measure and rendered its final report in March, 1909. A few months later, Georges Clemenceau, who stood firmly by the Radical-Socialist principle of the general ticket, gave way to Aristide Briand as prime minister; and the latter, although expressing the belief that proportional representation should first be applied to municipal elections in order to determine its effects, allowed the bill to be debated. By a vote of 281 to 235 the Chamber endorsed the principle of proportional representation; but when it became obvious that no satisfactory agreement could be reached as to the details, Briand demanded that the Chamber reconsider its action, and this it did by a vote of 291 to 225.[1] Briand unquestionably took the statesmanlike course, because at that time there was nothing to indicate that the chambers or the country had arrived at anything like a final conclusion. He wisely awaited the verdict of the elections of 1910.

Accepted by the Chamber

The new Chamber, chosen largely on this issue, unmistakably favored the reform. No less than 318 of the 597 members associated themselves in a "proportional representation group."[2] Briand, always practical in his leadership, felt that the

[1] Petitjean, *op. cit.*, page 125; Pierre, *op. cit.*, Sec. 216.

[2] Petitjean, page 135.

time was ripe for action; but not till July, 1912, after several changes of ministry and more or less fundamental modifications in the original measure which he had introduced, did the Chamber finally adopt it. The bill as passed gave particular recognition to the lists of candidates put forward by different political groups. It provided that each department should form a separate election district with a number of seats apportioned on the basis of population; that each voter should have as many votes (not cumulative) as there were seats to fill; that the "list vote" should be determined by dividing the aggregate votes of all the candidates on a list by the number of such candidates; that seats should first be assigned by dividing the list votes by the electoral quota, this quota being obtained by dividing the total number of voters by the number of seats; that the seats not thus assigned should be given to lists which, before the election, had declared intention to pool their interests and whose combined votes contained the electoral quota; and that any seats still remaining should be assigned to the list or combination of lists which had obtained the largest number of votes.[1] The cabinet of the day, led by Raymond Poincaré, urgently pressed the bill to passage and

[1] The meaning of these rather obscure and complex provisions may be understood by reading the text of the bill in Petitjean, *op. cit.*, page 261 *et seq.*, and by examining the concrete illustrations given in the first pages of his book.

secured a vote of 339 to 220; but the victory was won without the support of the normal government majority which included all the important groups of the Left except the Unified Socialists (Socialist Republicans, Radical-Socialists, Radical Left, and Democratic Left). Only 130 of the 371 deputies belonging to these groups accepted the bill.[1] Truly a singular phenomenon under the parliamentary system to have a first-class government measure carried mainly by opposition votes! The explanation is easily found. Many believed that proportional representation, as Waldeck-Rousseau emphatically asserted in 1902, would increase the weight of minor parties and accentuate the existing incoherencies of the Chamber.[2] It would give added strength to the so-called reactionary parties (including the Republican Federation); therefore these parties gave it unanimous support. By disintegrating the Republican majority, as it seemed not unlikely to do, it would restore to the Unified Socialists the dominant position which they had held in the time of the Combes ministry; and apparently the Socialists, always ready to wreck

[1] Petitjean, *op. cit.*, page 190, gives the detailed vote on final passage.

[2] Léon Bourgeois expressed the same opinion in 1909. "In reality the results of the so-called proportional representation would be to increase artificially the strength of the opposition parties. . . . It is a formidable instrument of division and destruction." Petitjean, *op. cit.*, page 128.

bourgeois governments, saw here a great opportunity. The attitude of parties had been determined, not by the abstract arguments which they put forward, but by the probable effects of proportional representation upon their particular interests.

Rejected by the Senate

When the bill went before the Senate, it met with a very cold reception. The Radical-Socialist majority had no intention of digging its own grave. Although Briand, who had once more become prime minister, made the passage of the bill a matter of confidence in the cabinet, the Senate substituted a bill of its own, providing for the general ticket;[1] and when, in November of the same year (1913), the Chamber reiterated its desire for proportional representation in a somewhat altered form, the Senate again substituted its bill. So the matter stood at the outbreak of the war.

Electoral law of 1919

In 1919, with the Radical-Socialist Clemenceau as prime minister, the chambers composed their differences and agreed upon a system of election that has far more of the *scrutin de liste* about it than of proportional representation.[2] The department takes the place of the arrondissement as the electoral unit, forming a single constituency with at least three deputies to elect.[3] Candidates

[1] For the text see Petitjean, *op. cit.*, page 269 *et seq.*

[2] Law of July 12, 1919; see Appendix III.

[3] The most populous departments may be divided by law into districts returning at least three deputies each.

may offer themselves either singly or in groups; that is, if there are five seats to fill, the parties may each put forward a list bearing from one to five names, and independents may run alone or in combination; in any case the candidature, single or collective, constitutes by itself a "list." Each voter has as many separate, non-cumulative votes as there are seats to fill; and since party lines are drawn in the elections, he may be expected in ordinary circumstances to give all those votes to the candidates who appear on the list or ticket of his party. He will not "split the ticket." Now the law says (Art. 10) that every candidate who receives the absolute majority—that is, the vote of half plus one of the actual voters — shall be proclaimed elected. In practice, with the general voting of the straight ticket, this will permit one party to make a clean sweep of the department and completely exclude the minority from representation. How often this will happen will depend upon the relative strength of the parties in the different constituencies. In 1914, when the last elections under the district ticket took place, nearly sixty per cent of the deputies were returned by absolute majority on the first ballot; in 1919, nearly thirty-five per cent.

Up to this point we have the *scrutin de liste* or general ticket in its normal operation. Under certain contingencies, however, the law does provide for minority representation. The seats,

Partial application of proportional representation

when not filled by absolute majority vote, are to be distributed among the lists roughly in accordance with the vote received. The share of each list is determined by the number of times its "average" (aggregate vote of all its candidates divided by the number of its candidates) contains the "electoral quota" (number of voters divided by the number of seats).[1] Any seats remaining shall be assigned to the list that has the highest average. This arrangement was no doubt intended to satisfy at small expense the clamor for proportional representation. Really it concedes very little. Let us suppose that in a department of 450,000 population, returning six deputies to the Chamber, the electoral quota is 13,000 (one sixth of the 78,000 actual voters) and the list averages as follows: Radical-Socialist, 30,000; Democratic-Republican, 25,000; Unified Socialist, 10,000; A. L. P., 8000; Republican Federation, 5000. When the list averages are divided by the electoral quota, two seats will be assigned to the Radical-Socialist list, one seat to the Democratic-Republican list. The other three seats will go to the Radical-Socialist list which has the highest average. If the averages are changed a little, if the Democratic-Republican average is increased to 26,000 and the Unified Socialist to 13,000 there will be a fairer distribution: three seats to the Radical-Socialists two

[1] Within each list the seats go to the candidates polling the highest vote or, in case of equality, to the oldest.

to the Democratic-Republicans, one to the Unified Socialists. It is a haphazard system, evidently intended to sanction the principle of minority representation without securing its substance.[1]

Second elections

The law provides (Art. 13) for a second election two weeks later in case not more than half of the registered voters have gone to the polls or in case no list has obtained the electoral quota. The same procedure is followed as in the first election. But on this occasion, if no list obtains the electoral quota, then the seats are assigned to the candidates polling the highest vote. This is nearly equivalent to saying that the list polling the highest vote shall get all the seats; for all of the candidates on a given list are likely to receive the whole party vote

They encourage manipulation

The practice of holding a second election, which would be unnecessary under a sound system of proportional representation, seems to foster political chicanery and manipulation. It certainly did so while the *scrutin d'arrondissement* or district ticket prevailed. The rule then was to hold a second election (*ballottage*) whenever no candidate received in the first election an absolute majority of the votes cast or whenever that majority did not equal at least one fourth of the registered voters. The *ballottage* was open

[1] The working of the system is described very clearly in *Representation* (organ of the English Proportional Representation Society), October, 1919, pages 10–16.

not only to all the former candidates, but also to any new candidates who chose to offer themselves;[1] and a mere plurality sufficed for election. This arrangement encouraged minor parties, which had no hope of ultimate success, to put forward candidates of their own in the first election. They had nothing to lose by such tactics; for if with their support the candidate of a party close to them in its platform would have secured the required majority, without their support no other candidate could secure it; the decision was simply postponed. They had, on the other hand, much to gain. Besides maintaining their organization, they were able to bargain with the larger parties on the basis of demonstrated voting strength and to exact a price for joining forces in the second election. Intrigues and maneuvers filled the interval of two weeks. The candidate who needed a few hundred votes would pay a heavy price for them, modifying his platform or making secret promises to gain the adhesion of a minor party. He went to the Chamber of Deputies as the representative of conflicting interests, which embarrassed his course of action and made consistency impossible. These local coalitions, accompanied as they sometimes were by scandalous sacrifice of principle, have been the subject of much criticism. The na-

[1] As the law of 1919 is silent on this point, we may assume that no change is intended and that new lists may be put forward in the second election.

tional parties, through their congresses and committees, now seek to bind the candidates everywhere to a given line of action — the Unified Socialists, for instance, in 1914 laying down specifically the conditions under which alliance might be made with the Radical-Socialists and other parties.

Size of the Chamber

The size of the Chamber of Deputies is fixed with reference both to population and territorial units.[1] Under the district ticket (prevailing before 1919) seats were apportioned to each arrondissement on the basis of population, one seat for every 100,000 inhabitants; but as the law recognized fractions of this number, however small, an arrondissement was entitled to one seat whether its population was 10,000 or 100,000 and to two seats whether its population was 100,001 or 200,000.[2] Arrondissements returning more than one deputy were divided into single-member districts.

Now 626 deputies

Under the law of 1919, which substitutes the general ticket with minority representation for the district ticket, the department takes the place of the arrondissement as the territorial unit. Each department is entitled to one seat for every 75,000 inhabitants and to an additional seat for a major fraction of 75,000; but irrespective of population it is entitled to a minimum of

[1] Dalloz, *op. cit.*, Sec. 493 *et seq.*

[2] For French criticism of this system see Garner, *op. cit.*, pages 622–624.

three seats.[1] As a general rule the department forms a single constituency.[2] Only those departments returning more than six deputies to the Chamber may (by law) be districted. In case of such division each district must return at least three deputies. On the approach of a general election seats are reapportioned by statute if a national census has been taken since the previous election.[3] Thus the reapportionment act of 1910 gave the Chamber 597 members; the act of 1914, 602 members; and that number remained unchanged in the election law of 1919, no census having been taken during the war. With the provisional organization of Alsace-Lorraine,[4] recovered by the treaty of peace with Germany, however, 24 deputies were assigned to the new departments: 7 to the Upper Rhine, 9 to the Lower Rhine, and 8 to the Moselle. Next to the House of Commons the Chamber of Deputies, with 626 members, is the largest legislative assembly in the world.

Method of nomination

The French have devised no elaborate nominating machinery. They find it difficult to understand our complicated mechanism of conventions and primaries. Of course the parties determine by their own rules how their accredited

[1] "For the time being and until a new census is taken each department shall have the number of seats at present assigned to it." Law of July 12, 1919, Art. 2.

[2] *Id.*, Art. 3. [3] The census is taken every five years.

[4] Law of October 19, 1919.

candidates shall be selected.[1] But, as far as the law is concerned, any qualified person may become a candidate simply by informing the prefect, at least five days before the election, that he intends to run in a particular district and by attaching to his declaration of candidacy the sworn signatures of 100 local voters.[2] The provision requiring signatures is a novel feature of the law of 1919, doubtless suggested by the English practice of nomination by petition. Formerly there was no such requirement; the candidate announced himself — that was all. The new departure may portend more radical changes later on, perhaps even a gradual approach to a system of regulated primaries. Its immediate purpose seems to be the discouragement of individual candidacies; for in the case of the regular lists bearing the names of several candidates (it must be remembered that each constituency now elects three or more deputies) the signatures of the candidates themselves are sufficient.[3] There is one other limitation, and this dates back to 1889. A law adopted during the Boulanger panic makes it impossible for a man to stand in more than one constituency at the same time, the fear being that a number of simultaneous successes might

[1] See Chapter X.

[2] Law of July 12, 1919, Art. 5, Sec. 5.

[3] Only ten individual candidates offered themselves in the election of November 16, 1919; three of these (including René Viviani) were successful.

encourage thoughts of *coup d'état.* Not only is violation of the law punishable by a heavy fine, but ballots cast for any person not a legal candidate must be rejected as void. Thus in 1889 Joffrin was declared elected over Boulanger who, though receiving more votes than Joffrin, was disqualified under the law of that year. Professor Duguit condemns this law as violating the democratic principle that a citizen may offer himself wherever he pleases and that a citizen may vote for whomever he pleases without respect to the question of formal candidacy.[1] Under a self-nominating system, although candidates may be numerous, they are not so numerous as Americans are likely to suppose; nominations, being free, are not an object in themselves. Moreover, from the standpoint of the electorate the ballot is no harder to vote with eight or ten competing lists than with two or three; complication comes from the multiplicity of elective offices, not from the multiplicity of candidates for a single office; and in France, as generally in European countries, only one office is filled at any given election. There is always a "short ballot." Even when the general ticket is employed and four or five deputies are elected instead of one, the task of the voter is still relatively an easy one. He votes four or five times; but each time the standard by which he judges the candidates is the same because the office to be filled is the same.

[1] *Op. cit.*, Vol. II, page 240.

Qualifications for the Chamber

With regard to qualifications for the Chamber of Deputies the general rule is that any voter twenty-five years of age may be elected in any constituency. Neither by law nor by custom is local residence required. As in the case of the Senate,[1] there are a few absolute disqualifications (for instance, failure to satisfy the requirements of the military law) and "relative" disqualifications which render officials ineligible within the areas where their functions are exercised The law also establishes what are termed "incompatibilities," the purpose being to prevent the abuse of executive patronage.[2] A salaried public official, while he may be elected to the Chamber, cannot retain both his seat and his office; within eight days after the election has been validated he must make his choice between them. Thus a prefect, who may be returned to Parliament by any constituency outside of his own department, cannot continue to be both a prefect and a deputy. The French rule, however, like the English one from which it was borrowed, permits numerous exceptions, among these being ministers, undersecretaries, ambassadors, the prefect of police, the prefect of the Seine, and various high judicial officers. It is further provided that when, after election, a deputy accepts any salaried public office, other than the office of minister or under-

[1] See Chapter V. The rules applying to the two chambers are not identical. Duguit, Vol. II, page 263.

[2] Law of November 30, 1875, Art. 8.

secretary, he thereby forfeits his seat [1] and cannot seek reëlection to the Chamber unless the office is "compatible" with the mandate.[2]

Parliamentary privileges

Election to Parliament brings with it certain privileges which have been derived from the old English precedents. The chief of these are freedom of speech and freedom from arrest. "No member of either house," says the constitution,[3] "shall be prosecuted or held responsible for any opinions expressed or votes cast by him in the performance of his duties"; and under the law of 1881 no action lies against a member of Parliament because of any speech delivered in the chambers or published by their orders.[4] The constitution also declares that "no member of either house shall, during the session, be prosecuted or arrested for any felony or misdemeanor except upon the authority of the chamber of which he is a member, unless he be taken in the very act." [5]

[1] Law of November 30, 1875, Art. 11.

[2] Senators may, without losing their seats, accept salaried offices "compatible" with the mandate. On the general subject of disqualifications see especially Pierre, *op. cit.*, Secs. 337–346; Duguit, *op. cit.*, Vol. II, page 260 *et seq.*; Esmein, *op. cit.*, page 861 *et seq.* Esmein cites certain private offices (connected with subventioned steamship lines, for instance) that are now "incompatible" with the legislative mandate.

[3] July 16, Art. 13.

[4] See Duguit, Vol. II, page 281 *et seq.*

[5] Constitutional law of July 16, Art. 14. It was therefore necessary in 1919 to deprive Joseph Caillaux of his parliamentary immunity before he could be brought to trial on the charge of high treason.

The members are paid.[1] They receive $3000 (15,000 francs) a year, or considerably less than half the sum paid to Congressmen in the United States. In 1906, when Parliament fixed upon this amount (an increase of $1200) and made it applicable from the beginning of the next year, there was widespread criticism such as the "salary grab" of 1873 aroused in the United States; but the law was not repealed. The presidents of both chambers receive in addition to the regular salary $14,400 and an official residence.

Duration of the Chamber

The normal term for the Chamber of Deputies is four years.[2] At any time within that period it may be dissolved by the President with the consent of the Senate;[3] but, contrary to the practice in England and the English colonies, where dissolution invariably supervenes before the end of the mandate, the life of the Chamber has only once been interrupted in that fashion. The anti-Republican sentiments that actuated McMahon and the Senate in 1877 seem to have discredited permanently a device which is, in the words of a distinguished French publicist,[4] "indispensable to constitute parliamentary majori-

[1] Except for the period 1815–1848 payment has been accorded ever since 1789.

[2] As the Senate is a continuous body, the French follow American practice and give to each Parliament a new number after the election of the Chamber. The "first legislature" was elected in 1876; the twelfth in 1919.

[3] Constitutional law of February 25, Art. 5.

[4] Guyot in *Contemporary Review*, xcvii, page 147.

ties. . . . In France a ministry is formed, not because it represents a majority; it is only after its formation that it creates a majority." A French cabinet is therefore less intimately in contact with the people than an English cabinet is.[1] Parliamentary elections first occurred in the spring of 1876, but after the dissolution of the next year they came in the autumn. As that date seemed disadvantageous in an agricultural country, a law of July 22, 1893, extended the life of the next Chamber until the end of May, 1898 (that is, for several months), so that spring elections could be restored. In view of the silence of the Constitution the right of Parliament to enact such a law cannot be contested; nor will any one be likely to assert that a fixed constitutional date for elections on the American plan would have left France as free to meet the emergencies of the Great War. Parliament was able, by statute, to postpone all elections until 1919. Because of this postponement the eleventh legislature lasted for a year and a half beyond its normal term, the new Chamber being elected in November, 1919, five months after the conclusion of peace with Germany. In order to avoid

[1] Some English writers believe that in view of the important changes which the Parliament Act of 1911 has made in the situation of the House of Commons, English cabinets may no longer resort to dissolution. See Dicey, *Law of the Constitution* (8th ed., 1915), page lii; Low, *Governance of England* (new ed., 1914), page xviii.

the recurrence of autumn elections it was provided that the mandate of the twelfth legislature should not expire until May 31, 1924.

The election campaign

The quadrennial elections take place, under a decree issued by the government, at some time within the sixty days preceding the expiration of the mandate.[1] At least twenty days must elapse between the issuing of the decree and the holding of the election,[2] these intervening weeks being known as the electoral period.[3] Throughout this electoral period the campaign proceeds; candidates issue their platforms (*professions de foi*) which, framed to suit local conditions, are frequently inconsistent with the principles of the parties to which they ostensibly belong. Candidates are much less subject to party control than in the United States; their personal views count a great deal with the voters. But in the last twenty years there has been a remarkable development in the organization and discipline of the parties; annual conventions which formulate principles and choose the national committee have become the general rule; and the more powerful parties (as the Unified Socialists and the Radical-Socialists) permit no candidate to run in their interest unless his "profession of faith" has been submitted and approved. The growing strength of party organization has also given the party leaders a larger voice in the direction of

[1] Law of June, 1885.

[2] Law of November 30, 1875. [3] Dalloz, Sec. 504.

the campaign. They travel about the country more than they used to do, expounding their views in public speeches and thus emphasizing the importance of national policies over against the narrower interests of localities. This practice tends to bring the candidate into closer contact with his party. The art of campaigning is much the same everywhere; in canvassing and in extending his personal popularity with the voters a French candidate employs methods which would not seem out of place in America. There are points of contrast, of course; and one of these is the extensive use made of posters. In recent years, as Esmein observes,[1] each candidate has tried to submerge the declarations of his adversaries under a flood of multicolored posters. Rivalry in this matter proceeded so far that it became a serious abuse, entailing as it did heavy expenditures; and under the law of March 20, 1914,[2] communes must now provide official billboards of stated size and divide them equally among the candidates.

Elections

As in other Catholic countries of Europe, the elections invariably take place on Sunday.[3] The polls open at eight — unless the prefect, at the request of the mayor, should fix an earlier hour

[1] *Op. cit.*, page 898.

[2] Pierre, *op. cit.*, supplement, Sec. 207; Esmein, *op. cit.*, page 899.

[3] This is an advantage to the laboring class. Even in some of the Protestant states of Germany municipal elections are

— and close at six. The polling-place, which the prefect designates, is always a public building: the town hall or, if more than one polling-place is needed, a public school as well; it need scarcely be said that the surroundings are more suitable to the dignity of the occasion than those of the subterranean laundries and tailor shops that are often used in American cities.[1] Each registered voter receives what is called an "electoral card." This serves the double purpose of informing him as to the time and place of the election and of establishing his identity when he presents himself to vote. It bears his name, the date of his birth, his address, and a statement of his qualifications for the suffrage. In rural communes, where the cards are usually distributed by the police, a considerable number of voters may, by design or accident, be overlooked; and this circumstance has been held sufficient ground for annulling an election.[2] But a voter who fails to receive a card, or to bring it to the polls, is still permitted to vote providing he is personally known to the election board or can produce two other voters to identify him. In the large centers

Use of the electoral card

now held on Sunday. (Dawson, *Municipal Life and Government in Germany*, 1914, page 74.) Until 1871 French elections extended over several days, as was the case in England. (Pierre, *op. cit.*, Sec. 256.)

[1] Moreover, by using its own buildings, the commune effects a considerable economy.

[2] Dalloz, Secs. 557 *et seq.*; Pierre, *op. cit.*, supplement of 1914, Sec. 260.

of population, where there is so much danger of fraud, the voter must apply at the town hall for his card and there affix his signature to it. On election day, if fraud is suspected, this signature may be compared with a new one made in the presence of the election board. In any case the board will not permit a man to vote simply because he possesses a card; it must be satisfied that the card belongs rightfully to him and that his name appears on the register. When the voter presents his card, an election official cuts off one of the corners and strings it on a piece of thread or places it in a box provided for that purpose. This practice serves a double purpose: not only is it a safeguard against "repeating" (voting more than once), but it serves also as a means of detecting mistakes or frauds when a discrepancy is found between the number of ballots cast and the number of voters checked off in the register. After being clipped the card is returned to the voter who must present it again if a second election is held.

No Australian ballot

Vote by ballot superseded the *viva voce* system in France at the time of the Revolution;[1] but the Australian ballot, printed by the state and distributed inside the polling-place, has not yet been fully adopted.[2] All the law requires is that

[1] Pierre, *op. cit.*, Sec. 342.

[2] There is reason to believe, however, that its adoption will not long be delayed. The proportional representation bill as passed by the Chamber in 1912 provided that "the ballots

the ballots shall be made of white paper and bear no exterior marks.[1] They may vary in size, shape, and quality; they may even be "lightly tinted" with blue or pink or yellow. In other words the candidates, who print their own ballots, may easily give them a distinctive character without violating the law in any way. Until 1919 these ballots were distributed at the voters' homes some time before the election and again outside the polling-place on election day, a practice that added materially to the cost of the campaign. As the voter approached the polling-place, ballots were thrust into his hands by a group of workers whose hats were decorated with huge labels bearing the names of their respective candidates. That system was somewhat modified, however, by a law of October 20, 1919, applying only to the election of the new Chamber. The law provided that the candidates might have their ballots printed

of all the lists in the constituency shall be printed on the same sheet under the direction of the administration" and distributed to each elector. As already noted, the Senate rejected this bill. A similar provision, which required the printing and distribution by the state of separate ballots for each list, was incorporated in the bill of 1919 by unanimous vote of the Chamber, but struck out by the committee which reported the bill to the Senate. In both cases the government was required to print and distribute election circulars prepared by the candidates, the size and weight of these circulars being fixed by ordinance. The special arrangements made for the elections of 1919 are mentioned below in the text.

[1] Dalloz, Secs. 619 *et seq.*; Pierre, Sec. 245.

by the state (though not at public expense) and sent to the voters by mail under an official frank, election circulars of specified size accompanying the ballots. It provided further, that on election day the voter should receive ballots from the election board inside the polling-place and in no other way. According to the interpretation of the law by the minister of justice,[1] the candidates were still free to print their own ballots if they so desired.

The procedure of voting has been much changed by recent legislation. Formerly the voter merely folded his ballot and handed it to the president of the election board who put it in the ballot box. This was called secret voting; but it left the way open to many abuses. The voter, having been bribed or intimidated, might be furnished with a particular ballot and kept under observation to prevent his substituting another; or the president of the board might examine it, pretending to believe that several ballots had been folded together; or he might surreptitiously deface it and render it invalid.

Secrecy: envelopes and polling booths, 1913

Under the law of 1913, which provides for polling-booths and the "envelope system," absolute secrecy has been ensured.[2] Each voter, after presenting his electoral card, receives an official

[1] *Le Temps*, October 31, 1919.

[2] Law of July 29, 1913, as modified by the law of March 31, 1914. See Pierre, *op. cit.*, supplement, Secs. 243 and 246; Esmein, pages 896–897.





A. DISTRIBUTION OF BALLOTS
B. THE ENVELOPE SYSTEM OF VOTING

envelope made according to a fixed pattern and of opaque paper; entering a polling-booth (*isoloir*), protected even from the eyes of the election board, he puts a ballot into the envelope; and finally, after satisfying the board that he holds only one envelope, he drops it into the ballot box himself. These new arrangements, while they require more time for voting and counting the vote, greatly reduce the possibility of corruption.

Supervision of the poll

The election board consists of a president, four assistants (*assesseurs*), and a secretary, the latter having only a consultative voice.[1] As in the case of the registration board, service is gratuitous, the cost of elections being a negligible item in France. The mayor of the commune always acts as president;[2] the councilors as *assesseurs*. If the designated councilors fail to appear, the duty falls on the two oldest and the two youngest voters present at the opening of the polls. The law imposes no qualification except the ability to read and write. The members of the board may therefore be salaried officials subject to government influence or even candidates for election. The president preserves order. As the voters have a right to remain throughout the proceedings, this is not always a light task. While he may expel individual voters who create a disturbance, a general expulsion is permitted only

[1] Dalloz, Secs. 575 *et seq.*; Pierre, Sec. 232.

[2] If the commune contains more than one polling-place, the adjoints or councilors

in extreme cases where the public order is menaced; and in either event the validity of the election may be attacked on the ground that he made unwarranted use of his authority. Sometimes, when party feeling runs high, there may be enough commotion (spontaneous or otherwise) to screen the acts of a corrupt board from observation.

Counting the vote

After the close of the poll the count begins. The board first compares the number of envelopes in the box with the number of voters shown by the register and by the corners clipped from the electoral cards, discrepancies being noted in the official record. If more than three hundred votes have been cast, the board designates some of the electors present to assist in the count, four sitting at each table and doing their best to be accurate while the voters wander about the tables and engage in animated controversies. Ballots are counted which in the United States would clearly be void: ballots bearing the names of too many candidates (only the first names are considered in such cases) or facetious comments or even verses. Returns from all the polling-places in the department are examined by a canvassing board (*commission de recensement*) which rectifies mistakes and announces the result of the election for the constituency.[1]

[1] This board is now composed of four members of the general council of the department who are not candidates in the election, with the president of the district court as chairman.

Contested elections

The election returns as compiled in each department by the canvassing board can be reviewed by only one authority. Under the constitution each chamber is judge of the eligibility of its members and of the regularity of their election.[1] As soon as the new Chamber of Deputies has installed a provisional president, its members are divided by lot into eleven sections called "bureaux."[2] The election returns and all documents bearing upon them are distributed among these bureaux which, through the medium of small committees (again chosen by lot), examine them and make report to the Chamber on each election separately. Undisputed returns are dealt with first so that the Chamber may immediately seat a majority of its members and proceed with permanent organization. In the case of contested elections, even when the complaint has been made informally by letter or telegram, a review of the alleged irregularities will entail some delay. The bureau must determine whether the candidate was eligible, whether he obtained the required vote, whether

[1] Constitutional law of July 16, Art. 10. This power of deciding election contests has resided in the legislature since 1789. On the general subject see Pierre, Secs. 354 *et seq.*; Dalloz, Secs. 791 *et seq.*; Duguit, Vol. II, page 301 *et seq.*

[2] An ingenious mechanical device is used for this purpose: 626 balls bearing the names of the members roll, with the movement of a board, into as many holes which have been divided into groups corresponding with the eleven bureaux. Pierre, Sec. 713. The Senate has only nine bureaux.

the electoral operations were in accordance with the law, and whether there were any circumstances (such as corrupt administrative influence) that would vitiate the election. If the facts prove difficult to establish, the Chamber may, on its own initiative or at the request of a bureau, authorize the appointment of an investigating committee of eleven members (one named by each bureau); and this committee will have power, under a statute of 1914 to compel the attendance of witnesses and to put them under oath.[1] When the bureau renders its final report, the Chamber decides simply whether the election shall be validated or invalidated; and its decision is not subject to appeal. There are no limits or restrictions upon the prerogatives of the Chamber when it verifies the powers of its members, according to Eugène Pierre; it is bound neither by the laws nor by the decision of universal suffrage. Although Duguit expresses astonishment that a serious author could write such things,[2] in reality the Chamber of Deputies, like every other political body possessed of such a power, has usually been influenced by partisan considerations rather than a nice sense of justice.[3]

[1] Pierre, *op. cit.*, supplement, Sec. 592.

[2] *Op. cit.*, Vol. II, page 303.

[3] Down to 1907 the American House of Representatives decided 379 of 382 contests in favor of the majority party. Alexander, *History and Procedure of the House of Representatives*, page 324.

It is true that the bureaux, because chosen by lot, may recommend action unfavorable to the interests of the majority and that the majority itself, being composed of several more or less antagonistic groups, may not always hold together. But the vote is taken without adequate information, few members having the time or inclination to study voluminous reports; and unless the facts are so clear as to admit no difference of opinion, each group will support the claims of its own candidates and purchase the support of allied groups by the familiar practice of log-rolling. Partisan advantage is never overlooked. Naturally the groups that suffer most from this abuse advocate a change. Influenced by the practice of Great Britain and her colonies, where for half a century the courts have determined election contests, they propose to entrust this power to the Council of State which already has jurisdiction over municipal elections. The Republican Federation (formerly known as the Progressist party) recommends a commission drawn, in equal numbers, from the Council of State and the Court of Cassation.[1] But the majority, well satisfied with existing methods, is not likely to sanction a change of that sort.

Corrupt practices

When the Chamber voids an election because of corrupt practices, no further penalty is thereby imposed on the guilty parties; the unseated candidate, even though shown to have bribed or

[1] Jacques, *Les Partis politiques* (1913), page 209.

intimidated voters, may offer himself in the ensuing by-election. Violations of the law are punished, not by the Chamber, but by the criminal courts.[1] If the public prosecutor fails to act, any voter of the constituency may set the machinery of the criminal law in motion. Under the decree of February 2, 1852 — which defined such offenses as false registration, illegal voting, tampering with the ballots or the returns, intimidation, bribery — conviction was difficult to secure. "It may safely be said," Aristide Briand observed in 1910,[2] "that corruption generally escapes all repression." Critics pointed to many defects in the law. These defects have been remedied, however, by the laws of July 29, 1913, and March 31, 1914.[3] The former deals with offenses in connection with voting and counting the vote. The latter punishes with a fine of five thousand francs and imprisonment for two years those who, by money or favors or promises, attempt to influence the voters and those who accept or solicit such bribes; it punishes with like severity those who are guilty of undue influence (for example, intimidation or threat of the loss of employment); and any one convicted

[1] On the subject of corrupt practices see Dalloz, Secs. 853–884, and Pierre, *op. cit.*, and supplement, Secs. 285–299.

[2] Pierre, supplement, Sec. 292.

[3] For the text of these laws see Pierre, *op. cit.*, supplement, Sec. 292. A useful summary will be found in Duguit, *Manuel de droit constitutionnel* (3d ed., 1918), pages 371–374.

under the act is incapable of being elected to Parliament for a period of two years. Moreover, the act expressly condemns government pressure, which has always played a prominent part in elections; the mere promise of administrative favors is now illegal; and whenever a public official violates a provision of the law he is liable to double penalties. Those familiar with English and American legislation will be surprised to find that campaign expenditures are not limited in any way. It seems that large sums of money are rarely spent by French candidates.

CHAPTER VII

THE CHAMBER OF DEPUTIES: PROCEDURE

The regular annual session

AS in the United States, the constitution fixes a definite time for the meeting of Parliament — the second Tuesday in January.[1] This regular session must last for five months. It is true that in April of every fourth year, when a new Chamber is elected, adjournment takes place after a session of little more than three months; but the newly-elected deputies, acting upon a resolution of the outgoing Chamber, assemble on June 1 to complete the regular session. The constitutional provision requiring Parliament to meet every year and at a particular time is really superfluous. It may satisfy the doctrinaire who thinks that political life can be controlled by formulæ; but the necessity of voting the budget every year, indeed the very functioning of the parliamentary system, makes it certain that parliament will be active enough, if not too active, without a safeguard of this kind. The elastic English practice under which the session begins without compulsion of law whenever circumstances make it advisable seems to accord better with sound principles of government.

[1] Constitutional law of July 16, Art. 1.

Special sessions

Except in election years the regular session invariably lasts more than five months, terminating almost always towards the end of July. Then every year, in the early part of November, there is a special session rendered necessary by the failure of Parliament to pass the budget in the regular session. The intervening period (August, September, October) represents nothing more than the indispensable parliamentary recess. This special session, and indeed any special session, is called by the President either on the advice of his ministers or at the request of an absolute majority in each chamber.[1] No such request from the chambers has ever been made, and there is some doubt as to what constitutes an absolute majority.[2] Special sessions have always been called on the initiative of the cabinet.

Adjournment and prorogation

The President may adjourn the chambers,[3] but not more than twice in the same regular session and not for a longer period than one month in each case.[4] If the chambers themselves adjourn, the period of recess is counted in reckoning the

[1] Constitutional law of July 16, Arts. 1 and 2.

[2] Esmein, *Éléments de droit constitutionnel*, page 742, maintains that vacant seats should be deducted from the total; Duguit, *Traité de droit constitutionnel*, Vol. II, page 296, holds that under Esmein's construction the majority might become a minority later on because of by-elections.

[3] The term adjournment is used here to denote a temporary interruption of the session; prorogation, to denote the ending of the session.

[4] Constitutional law of July 16, Art. 2.

session of five months required by the constitution. Subject to the five-months' rule the President may at any time prorogue Parliament,[1] that is, close the session.[2] But of course when he adjourns or prorogues Parliament, his act is controlled by the responsible ministers. Prorogation does not in the Chamber of Deputies, as it does in the British House of Commons, terminate all pending business; when the next session opens bills may be taken up precisely where they were abandoned. Upon dissolution of the Chamber, however, all bills that have not been enacted are quashed and can be considered by the new Chamber only by being reintroduced and once more referred to committee. The Senate, being a continuous body, is subject to no such regulation. It may deal with bills passed by a defunct Chamber and enact them into law even though the quadrennial elections have shown that the voters are not favorable to their passage.

The daily sittings

Each daily sitting of the Chamber of Deputies opens with an impressive ceremony.[3] The president of the Chamber makes his entrance preceded by two ushers and followed by the secretaries; a guard of honor forms in line and presents arms while drums beat a salute. As soon as the president has mounted to his chair in the tribune, ushers announce the fact through the palace and

[1] See note 3, p. 187. [2] See note 4, p. 187.

[3] Pierre, *Traité de droit politique, électoral, et parlementaire*, Sec. 793.

electric bells are rung to ensure an adequate attendance. The Chamber usually meets at two o'clock and rises in time for dinner, that is, at some time between six and seven. When the hour of rising comes, — an hour fixed by custom and not by the rules, — or when the deputies are "visibly fatigued," the president consults the Chamber as to the day and hour of the next sitting.[1] Towards the end of the annual session and at other times when there is a great accumulation of business the Chamber is compelled to give more than the normal four or five hours a day to its work. Instead of continuing into the night like the British House of Commons [2] resort is had to sittings in the morning, which begin at nine or ten o'clock, and the afternoon sitting is postponed until three. Under the constitution the sittings are normally open to the public.[3] But "each chamber may form itself into secret committee on the demand of a certain number of members fixed by the rules. It then shall decide, by absolute majority, if the sitting should be resumed in public on the same subject." In the Chamber of Deputies a motion to go into secret committee requires the signature of twenty members and must be voted on without debate. These provisions of the

[1] *Id.*, Sec. 795.

[2] Except on Fridays the House of Commons does not rise till 11.30 P.M.; occasionally the sittings extend into the early hours of the morning.

[3] Constitutional law of July 16, Art. 5.

constitution and rules were put into effect for the first time after the outbreak of the Great War.[1]

Fixing the "order of the day"

In all legislative bodies it is obviously of prime importance to decide what shall be done, how time shall be apportioned among the numerous measures pressing for consideration. The fate of bills often depends upon their being brought forward at the right juncture. A proposed reform may be compromised if it is acted upon inopportunely or hastily; it may fail to receive any attention if it is held back till the rush of the closing days of the session. The Chamber of Deputies regulates the transaction of its business by what is known as "the order of the day."[2] The method of determining the order of the day has been much changed in recent years. Formerly the matter was left largely in the hands of the president who, at the close of the sitting, when the attendance was small and the remaining members were anxious to leave, would briefly state his proposals for the next day's business and ask for their confirmation. No doubt he formulated these proposals in consultation with the recognized leaders of the Chamber. Nevertheless, the arrangement met with some objection because, it was urged, a minority of the members might remain to the close of the sitting and mold the order of the day to their own advantage. These objections prevailed in

[1] Pierre, *op. cit.*, supplement of 1914, Sec. 800.

[2] Pierre, *op. cit.*, Sec. 803; also supplement, Sec. 803.

spite of the fact that the majority could then, as now, change the order of the day at any time and thus circumvent minority plottings of the previous day. A new rule, adopted in 1911 and modified afterwards,[1] has changed the procedure. Once a week, under this new rule, the president of the Chamber confers with the presidents of the party groups and of the twenty-one standing committees upon the state of business, the cabinet also being represented if it so desires. In other words this group of parliamentary leaders draws up a program for the ensuing week, a program which is printed in the *Journal officiel* and afterward submitted to the Chamber for approval.[2] No motion to change the proposed order of the day can be brought to the attention of the Chamber unless it is supported by the government or by fifty deputies. Do these new provisions of the rules give the government sufficient influence over the course of legislation? Not such influence as the British cabinet possesses. The order of the day is drafted by the presidents of the nine or ten groups and of the nineteen standing committees. While the latter will usually be sympathetic to the government views (the committees now being elected by proportional representation and thus reflecting the will

[1] Pierre, supplement of 1914, Sec. 804, and Rule 94 (1915).

[2] It also supervises committee meetings so as to prevent a situation arising where a deputy who belongs to two committees finds them both in session at the same time.

of the Chamber as a whole), the support of less than half the groups can be counted on, and every group has the same voice irrespective of its numerical strength. The premier may have to use threats or persuasive arguments; he may often be compelled to resort to bargain or compromise — logrolling.

Interior arrangement of the Chamber

The interior of the hall in which the deputies meet is semicircular in shape.[1] At an elevation of some ten feet, approached by a narrow staircase on either side, is the chair of the president. Immediately in front of him, but two or three feet lower, is the tribune from which the members speak. Facing the tribune there are a dozen concentric rows of seats which rise one above the other in the style of an amphitheater or demonstration room, the back of each seat having a miniature desk attached to it. Here the members sit. Once every four years, after the general election, the deputies are required to segregate themselves into political groups, no one belonging to more than one group.[2] Then the officers of the groups, consulting with the president, divide the seats into sectors and from right to left of the president's chair assign these sectors to the groups in accordance with their degree of

[1] The Chamber of Deputies sits in the Palais Bourbon, a building in the Grecian style which stands on the banks of the Seine and which dates back to the beginning of the eighteenth century.

[2] Rule 12 (1915).

conservatism or radicalism.[1] On the extreme right, therefore, sit the reactionaries; on the extreme left the Unified Socialists. The seats in the front row are reserved for special purposes, part of them being occupied by the cabinet ministers and part by whatever standing committee has reported the bill now under consideration in the Chamber. Unfortunately these seats are often invaded by deputies who are neither ministers nor committeemen and who come down from their places in order to be nearer to the tribune. The practice of speaking from the tribune has prevailed in France since 1790.[2] No doubt the explanation of this practice, which has spread to most of the continental countries, is that an amphitheater will hardly permit of anything else. Gallic eloquence, not to speak of Gallic gestures (which the foreign visitor may find rather diverting), cannot be effective when directed to the backs of an audience. It may be a great audience capable of being deeply stirred;

[1] Some deputies prefer to plow a lonely furrow and identify themselves with no group. Within twenty-four hours after the sectors have been assigned they may, by applying to the president, receive seats between the groups with which they are most nearly in accord. Rule 135 (1915).

[2] Except under Napoleon III, 1852–1865. See Pierre, Secs. 888–889. The present rule of the Chamber (No. 41) simply says that a deputy shall speak "at the tribune or from his place"; and this apparently means that the president may allow him to speak from his place either because of physical disability or because of a desire to shorten the debate.

for behind the last row of members and separated from it by twenty columns of polished marble there are two galleries, each of which will accommodate three or four hundred persons.[1] Mounting the tribune, the deputy must feel almost as if he were behind the footlights and as if his chief concern were to play upon the emotions of pit and gallery. Physical surroundings as well as racial temperament have given the Chamber of Deputies a character quite different from that of the American House of Representatives or the British House of Commons. In the American House oratory calls to mind high-school declamations; in the British House, where there are usually few members in attendance and where they are compactly seated, the debates may be of a rather conversational kind; in the French Chamber one hears speeches more often than debates, but speeches which, if a little theatrical at times and a little too reminiscent of the Athenian ecclesia, never descend to the level of the high school.

Officials of the Chamber

The affairs of the Chamber are directed by officials known collectively as the Bureau.[2] The

[1] Some of the seats are freely open to the public; others by ticket, the deputies receiving each day a certain number of tickets for distribution.

[2] The reader is reminded that the term "bureau" has a variety of applications in parliamentary life. The officials of

The Bureau of the Chamber

Bureau includes a president, four vice-presidents, eight secretaries, and three questors.[1] The vice-presidents relieve the president upon occasion. The secretaries, four of whom sit at one time, keep the minutes, inscribe the members who wish to speak, and count all votes.[2] The questors have the business management of the Chamber in their hands. They look after the funds of the Chamber, paying the deputies and employees and supervising other expenditures; they have charge of the archives, the library, and the building generally. All of these officials are elected annually from among the deputies and serve until the opening of the regular session of the

each political group in the Chamber constitute a bureau; for certain purposes the 626 members of the Chamber are divided by lot into eleven bureaux each month.

[1] When a new Chamber first meets after the elections the oldest member presides, the six youngest act as secretaries. Then a provisional bureau is chosen to serve until the election of half plus one of the members has been validated. In subsequent sessions of the same Chamber a provisional bureau consisting of the oldest member as president and the six youngest as secretaries assumes office and retires as soon as the "definitive bureau" has been elected. Pierre, Sec. 407.

[2] The transactions of the Chamber are recorded in various ways: (1) The *procès-verbal* gives a list of bills and reports, a resumé of the debates, and a statement of the votes. (2) The *comptes rendus* (prepared under direction of the secretaries, guaranteed as to their authenticity, and covered by legal immunities) are of three kinds: the *compte rendu in extenso* which is a stenographic report printed daily in the *Journal officiel* and given to newspapers in proof-sheets; the *compte rendu*

following year.[1] No constitutional or statutory provision stands in the way of their reëlection for any number of terms; but in the case of the secretaries the party groups have imposed a system of rotation which permits only two successive terms.[2] In the elections a secret vote is required and (until the third balloting when a mere plurality suffices) an absolute majority (half plus one).[3] Each office is filled by a separate election. The general ticket, with ballots printed beforehand, is used for all multiple offices

sommaire, compiled during the course of each sitting, and sent over the telegraph, bit by bit, to the President of the Republic, the president of the Senate, and a Paris newspaper syndicate; and the *compte rendu analytique* furnished free of charge to the Paris newspapers (some four columns of copy) either in parts during the course of the sitting or complete at nine o'clock in the evening when it goes to members of Parliament and to the provincial newspapers by post. The debates are printed in the *Journal officiel* and in the *Annales parlementaires;* the latter also contains the texts of all parliamentary documents. Pierre, Secs. 951–967.

[1] Constitutional law of July 16, Art. 11. "The bureau of each chamber shall be elected each year for the entire session and for every special session which may be held before the regular session of the following year." In the revolutionary assemblies the presiding officer was chosen every two weeks without being immediately reëligible; under the Republic of 1848 the term was one month. Pierre, Sec. 429.

[2] Pierre, Sec. 430.

[3] When there is no general favorite running for the office of president, group caucuses are sometimes held. Thus in May, 1912, the Radical Left and the Radical-Socialists met together in caucus to pick the successor of Henri Brisson.

— that is, except in the case of the presidency. There are two ballot boxes.[1] In one each member deposits his ballot enclosed in an envelope; in the other he deposits a "ball of control." It is not quite certain why these balls of control are used — whether to make sure that a quorum is present or to determine the number of votes for a calculation of the majority needed.[2] This much is certain, that because of the balls of control controversies have arisen which have put the Chamber in an absurd position. For instance, when the president of the Chamber was elected in 1898 (June) the balls of control numbered 557; the ballots, 556: Deschanel, 277; Brisson, 276; blank, 3 (blanks not counted in figuring the majority). Had a ballot been lost or a ball of control been put into the box by mistake? In the former case, if the lost ballot had been cast for Brisson, the result would have been inconclusive. Deschanel, while believing himself regularly elected, demanded a second ballot and was elected. Similar situations have arisen from time to time. In the election of secretaries that same year (1898) 421 ballots were cast, but 422 balls of control. On the basis of the ballots the absolute majority was 211. Jourdre had 211; Binder, 210; and Jourdre, feeling that he could not accept election under these circumstances, demanded a second election in which he was successful.

[1] Pierre, Sec. 415. [2] *Id.*, Sec. 427.

The president of the Chamber is the third personage in the country, taking rank after the President of the Republic and the president of the Senate. He lives in the Palais Bourbon, receives eighty-seven thousand francs a year (which includes his fifteen thousand as deputy), and possesses the franking privilege.[1] As presiding officer he guides debates, gives recognition to deputies who have had their names inscribed by the secretaries, maintains order and decorum, and generally applies the rules.

Rules of the Chamber

Indirectly the constitution gives to each chamber the right to frame its own rules. It says that secret sittings may be voted on the demand of a number of members fixed by the rules.[2] The first rules were adopted in June, 1876; since then there have been changes and additions, indeed something like a general revision in 1915. But like the "standing orders" of the British House of Commons, the rules are permanent in the sense that they apply, unless modified, to successive chambers; and, as in Great Britain, the inclination has been to leave the procedure unchanged. "Imperfect rules which are well understood by an assembly," says Pierre, "are better than rules which are constantly changed and which the members can make use of only by studying them and comparing their texts." This

[1] The deputies, not being regarded as public officials, do not have the right to frank.

[2] Constitutional law of July 16, Art. 5.

opinion has prevailed in the Chamber. All resolutions that propose to change the rules are subject to the same formalities (and delays) that apply in the case of ordinary legislation. This prevents the majority from gaining temporary advantage by tampering with the procedure; it minimizes the danger of hasty action based upon interests and emotions of the moment. "The ideal of the rules," says Pierre, "is not only to have them voted with practical unanimity, but also to have them sincerely accepted as just, wise, and practical. The experience of all parliaments (and notably that of the French Chamber) shows that the rules are among the most delicate concerns and that they are endangered by improvisation." [1]

Rules interpreted by the president

The president interprets the rules. He *may* ask for the opinion of the Chamber when he finds himself confronted by a doubtful point which the rules have not contemplated or when there is uncertainty as to the meaning of a rule or of a vote; [2] he *must* do so when the rules are silent. In all other cases the decision rests with him alone; and it is final. If this were not the case, the meaning of the rules would vary from day to day according to the caprice of a fluctuating majority.

Preserving order

In maintaining order the president does not wield a gavel like the speaker of the House of

[1] Supplement, Sec. 522.

[2] Pierre, Sec. 452.

Representatives, whose strokes upon a mahogany-topped desk resound through the corridors; nor does he go unarmed like the speaker of the House of Commons. He tries to quiet disturbances by ringing a bell. If the Chamber becomes tumultuous and the bell fails to calm it, he takes sterner measures; he puts on his hat.[1] If this drastic step fails of effect, he threatens to suspend the sitting. If the threat does not sufficiently impress the noisy element, he actually does suspend it. And if, when the sitting is resumed, the tumult continues, as a last resort the president orders an adjournment until the next day.

Enforcement of discipline

There are cases, of course, in which the president feels called upon to discipline individuals.[2] The means of discipline are: (1) the call to order, (2) the call to order with entry upon the minutes (this in case of a repeated offense), (3) censure, and (4) censure with temporary exclusion from the Chamber; and the rules describe in some detail the offenses that merit these different grades of punishment. While the president acts independently in calling deputies to order, he must secure the consent of the Chamber when he wishes to take the more rigorous course of censure. No doubt the deputies, when called to order or censured, would feel little concern were it not for the pecuniary losses involved. A call to order with entry upon the minutes carries

[1] Rule 53 (1915); Pierre, Sec. 487.

[2] Pierre, Secs. 455 *et seq.*; Rules 56–66 (1915).

a fine of half salary for two weeks; simple censure, a fine of half salary for one month; censure with temporary exclusion, a fine of half salary for two months. The period of exclusion is two weeks.

The presidency

So far as the rules go the president of the Chamber of Deputies has very much the same powers as presiding officers have elsewhere. But his position cannot be judged merely by powers conferred or withheld. In every legislative body influences are at work which transcend the rules and override formal considerations. The English speaker has gradually been transformed into a nonpartisan moderator who is retained in office notwithstanding changes in the party complexion of the House of Commons. The American speaker is frankly a partisan, elected by a vote which is taken as a significant test of party strength, and until the fall of "Uncle Joe" Cannon, in 1910, recognized as the effective leader of the majority in the House of Representatives. The president of the Chamber may be said to stand midway between these two types. "His first duty is impartiality towards all," says Duguit.[1] By usage — not by compulsion of the rules, he refrains from voting. He drops journalistic activities.[2] But, possessing all the privileges of an ordinary member, he may at any time leave the chair and engage in the debate.[3] He remains, as Pierre freely admits, a politician.

[1] *Traité*, Vol. II, page 308.
[2] Pierre, Sec. 435. [3] Pierre, Secs. 908, 917.

Its character as shown in its history

In order to understand the character of the office something must be known of its history. From 1876 to 1920 — a period of forty odd years — there have been twelve presidents of the Chamber. Of these Grévy, Gambetta, Floquet, Casimir-Périer, Brisson, and Deschanel were elected three times or more — Brisson, who died in 1912 after serving continuously for half a dozen years, twenty times; Deschanel, who occupied the chair at the time of his election to the presidency of the republic, fifteen times. While continuity in office has been the rule in late years,[1] and has tended to bring the president closer to the British speaker in type, there have been occasions not so long ago where the election roused party animosities to fever heat. There were contemptuous demonstrations on the Left when Paul Deschanel defeated by a single vote his more radical opponent, Henri Brisson, in 1898. The deputies understood quite well that the election reflected the attitude of the Chamber towards current political questions. In 1905 opposing policies were even more directly an issue. At the last moment Paul Doumer, president of the powerful budget committee, came forward to oppose the reëlection of Brisson. He was a vigorous opponent of the premier Émile Combes, whose pacifist and socialistic administration had undermined the efficiency of the naval and the military establish-

[1] Brisson from 1906 to his death in 1912; Deschanel from 1912 to 1920.

ments.[1] His election as president by twenty-five votes helped to force Combes out of office. When he took the chair on January 12, he had to face bitter denunciations on the Left, his inaugural address being interrupted constantly by insolent and ill-bred remarks which few parliamentary bodies would have tolerated. Part of the time his voice could not be heard above the uproar. Doumer ignored the interruptions; he simply said: "It is hardly generous to attack the president; he is the only one here who has no right to defend himself." He declared in the most specific way, however, that his election must be taken as representing the view of the majority on political questions. These two incidents are enough to show that the presidency has not been completely freed from the play of partisan rivalry. It is quite as instructive to observe that the presidents have almost all been leading politicians who have reached the presidency through the premiership or the premiership through the presidency. Gambetta accepted the premiership in 1881 because his triumphant reelection to the presidency had shown that he could command a sufficient following. Brisson (president 1881–1885) was also translated to the premiership; so was Floquet (president 1885–1888); so was Casimir-Périer in 1893 and Charles Dupuy in 1894, Casimir-Périer once again becoming president in the place of Dupuy. Bris-

[1] *Année politique*, 1905, page 9 *et seq.*

son, president again 1894–1898, became premier in the last year. This recurring transition from one office to another suggests that both offices are political. Let it be held in mind, nevertheless, that in the last ten or fifteen years the Chamber seems to have had some vision of the speaker in the English guise, the servant of the House, absolutely divorced from politics and supplanted in his old political function by a prime minister who now asserts legislative leadership. Paul Deschanel, while president of the Chamber, several times refused to accept the office of prime minister.

Legislative Committees

Importance of the committees

In the work of the Chamber the committees exert an influence which hardly seems to accord with the principles of the parliamentary system.[1] Under that system, as developed in England and transmitted to continental states, the cabinet should exercise an effective leadership; it should have power to act and be held accountable for its action. But when there are numerous committees and government bills may be mutilated by them and distorted out of their original shape, the government is obviously embarrassed in its dealings with the Chamber, for debate takes

[1] On the system of committees see Pierre, *Traité*, Secs. 711–786; also supplement, Secs. 711–786; Rules of 1915, pages 11–36, 85–87; Duguit, *Traité*, Vol. II, pages 341–347; Esmein, *Éléments*, pages 940 *et seq.*, and 976 *et seq.*

place, not on the government bill, but on the committee bill. Responsibility is divided or, to use a phrase of Mr. Wilson's, "spread thin." Much depends, of course, upon the character of the committees. Recent changes in the rules of the Chamber of Deputies, while increasing the efficiency of the committees, have also brought them more under the control of the cabinet.

Their character: now permanent

Down to 1902 the committees were temporary and special — special, because appointed in each case to examine and report to the Chamber upon some particular measure; temporary, because dissolving as soon as the Chamber had acted favorably or unfavorably upon the report. This arrangement, which the Senate still persists in,[1] came down from the Constitution of 1795, having been devised then in the light of experience with the over-powerful permanent committees of the Convention. Under the Third Republic criticism was constantly directed against it. Two eminent publicists wrote in 1889: "These multiple committees named according to the accident of the composition of the bureaux, having no tradition, able to devote themselves to no study followed in an order of determined ideas, whose

[1] With these exceptions: (1) four monthly committees which deal with minor concerns such as leave of absence for the members; (2) one biennial committee on customs; and (3) four annual committees (army, marine, railroads, and Senate accounts).

members will shortly be scattered among other committees with an absolutely different object, present the picture of a very complicated mechanism whose works and various organs are entangled with each other and which, for a great expenditure of energy and movement, give quite inadequate results." [1] The committees had proved themselves slow and inactive; there had been lack of coördination, since related measures went to different committees; there had been little encouragement to members of the Chamber to become specialists in this or that direction. In 1898, by way of a tentative step, several permanent committees were set up. Finally in 1902 the Chamber adopted a new rule which, with subsequent modifications (in 1910, 1915, and 1920), provides for twenty-one standing committees of forty-four members each. These last throughout the life of the Chamber [2] and have jurisdiction over all measures coming within their respective fields.[3]

The character of the committees was again

[1] Quoted in Duguit, *op. cit.*, Vol. II, page 343.

[2] Rules 11 and 12 of 1915. Until 1915 the budget committee was renewed annually; but this proved inconvenient because, owing to the recurrent delays in voting the budget, the Chamber frequently had to extend the competence of the committee to examine the budget of the succeeding year. See Pierre, supplement, Sec. 767.

[3] Under rule 14 of 1915 the committees receive from the president all bills coming within their proper field unless the Chamber orders otherwise.

fundamentally changed by the adoption of a new rule in 1910. Up to that time they had been chosen by a process which worked to the disadvantage of the majority and, consequently, of the cabinet representing that majority. It has already been noted that — for the purpose of examining and reporting upon election returns — the Chamber and Senate are divided by lot respectively into eleven and nine bureaux. These bureaux are reconstituted monthly. In the Chamber down to 1910 (and the practice still continues in the Senate) they received printed copies of all bills which had been introduced, made a preliminary examination of the bills, and then appointed committees to report upon them, each bureau naming one, two, or three members according to the size of the committee. It has been said in justification of this plan that each bureau would develop in its preliminary discussions a general attitude on the broad lines of a bill, that it would appoint committeemen who were in sympathy with that attitude, and that the members of the Chamber would be able easily to detect changes which the committee might import into the text.[1] Fifty years ago this may have been true. But under the pressure of legislative business today it is quite impossible for the deputies to give even cursory attention to all pending bills and at the same time do all the other things expected of them;

Old method of selection

[1] Pierre, supplement, Sec. 711.

the existence of the standing committees, by which the Chamber seeks to enlarge its capacity for work, is an illustration of this. Not only has the legislative burden portentously increased since 1814, when the bureaux were first established,[1] but the type of government has changed. The cabinet is now responsible to the chambers; its tenure of office depends upon a coalition of groups; and the measures which it introduces reflect the tendencies of that coalition. Obviously a committee elected by eleven bureaux, themselves the offspring of the lot, might easily reflect the tendencies of the opposition and harass the cabinet by recasting its measures. In advocating the election of the committees by the Chamber the late Jean Jaurès declared that, as things were, a committee would give long months of sterile work to the shaping of a bill and that at the first meeting of this fortuitous committee with the Chamber the bill would collapse and chaos reign.

New method: proportional representation

When the tenth legislature assembled (1910) dissatisfaction came to a head. The new rules then adopted not only made the committees elective, but applied the principle of proportional representation; and, in applying it, recognized for the first time the function of parties in the business of the Chamber.[2] The procedure is very

[1] There had been bureaux in the States-General. Duguit, *Traité*, Vol. II, page 341.

[2] Pierre, supplement, Sec. 739, and Rule 12 of 1915.

simple. It rests frankly upon the initiative of the party leaders. Five days before the election of committees the officers (bureaux) of the various groups in the Chamber prepare membership lists which thereupon are published in the *Journal officiel;* and — contrary to the earlier usage, so destructive of party discipline and responsibility — no deputy can appear upon more than one list; as the phrase goes, the groups are now "locked." [1] The number of committee assignments for each group is determined mathematically on the basis of its relative strength, the group itself selecting the members who are to serve; the leaders of all the groups, meeting together three days before the election, then fix the composition of all the twenty-one committees; and this slate is presumed to have the approval of the Chamber unless fifty deputies indicate their opposition in writing. In case of such opposition, where alternative tickets are put forward, the Chamber proceeds to a vote.[2] Once every four years, in the June following the general election, the bureaux examine election returns. Beyond that they do nothing but name

[1] Although the groups are locked only for the purposes of committee elections, they do as a matter of fact remain stable, partly because new elections are held from time to time to fill vacancies in the committees. The independents of various shades form themselves into a group temporarily so as to have some voice in selecting committeemen.

[2] Now that the committees are permanent and directly elected the survival of the bureaux seems anomalous.

the surviving monthly committees on leave of absence, petitions, local affairs, and initiative; and of these the first two are now often chosen directly by lot and the last two hardly ever meet. Under the circumstances, as Pierre remarks, "the monthly drawing of lots becomes almost a senseless operation." [1]

Committees as a check on cabinet

These changes in the committee system, all occurring since the close of the nineteenth century when Bodley and Lowell described it, have undoubtedly improved the situation. Above all the ministers are strengthened. The committees, when chosen, represent the majority as found in a coalition of groups and, even when this coalition gives way to another, they will represent the new majority; for since the party complexion of the Chamber is reflected faithfully in the committees, the same shiftings in party alliances take place simultaneously in both quarters. In normal circumstances the committees will support the cabinet when the Chamber does. It would be a mistake, however, to suppose that the cabinet has been freed from all menace of rivalry. Indeed the menace has increased in one direction. The committees, having acquired a permanent tenure and a jurisdiction over all measures coming within their various fields (such as the army,

[1] Supplement, Sec. 711. Yet it should be remembered that when any bill falls within the competence of no standing committee it is sent to the bureaux which then elect a special committee. *Id.*, Sec. 692.

agriculture, commerce and industry, instruction, and fine arts), tend to become intimately acquainted with departmental business and to interfere in its conduct; the minister finds himself checked in countless ways and hampered in his freedom of action. This does not make for administrative efficiency. Moreover, in the work of legislation the committees continue to play a rôle which places the minister at a disadvantage. Under the English practice a government bill is in the charge of a minister from the time of its introduction to the time of its passage; he has charge of it during the second reading in the House, during committee stage, and when it is reported; and the committee stage does not occur till the House has debated the bill and accepted its general principles. Under French practice, on the other hand, the bill goes immediately before a committee which meets in secret without the guidance of a minister and which still has charge of the bill when it is brought before the Chamber. For the moment the minister is overshadowed. Not he, but the reporter explains and defends the bill, accepts or rejects proposed amendments. Of course, the minister may interpose at any time; the premier himself may force his views upon the Chamber by demanding a vote of confidence. Nevertheless the formal procedure does create a divided leadership. The cabinet, instead of defending a measure of its own, may at times be in the position

of persuading the Chamber to reject the proposals of the committee. Not that this occurs frequently. As a rule, when the committee is examining a bill, it acts in close collaboration with the government and shows a disposition to give way when it cannot convert the minister to its own way of thinking.

Regulation of committees

In view of the important functions of the committees their proceedings are regulated in some detail. Although they frequently meet while the Chamber is sitting, the rules provide (Rule 26, of 1915) that "at least" one day a week shall be reserved for their work. The meetings are secret, only the author of the bill and those who propose amendments having the right to appear (Rule 28). In American legislatures secrecy has sometimes covered up illicit maneuvers; but the French committees are required to publish each day the list of members in attendance, to keep a record of their transactions, and to deposit this record in the archives of the Chamber (Rules 27 and 30). Eleven members, one quarter of the whole number, constitute a quorum (Rule 30). Unless a bill is reported within a period of six months, the author of the bill may ask the Chamber to place it forthwith on the order of the day.

Legislative Procedure

The bills which come before the committees fall into two classes: government bills (*projets*)

and private-member bills (*propositions*).[1] The distinction is not so sharply made as in England, where the cabinet has almost a monopoly of legislation; but though the constitution simply says [2] that the initiative belongs equally to the executive and the deputies, procedure does concede superior facilities to the government. "It has always been recognized," says Pierre, "that, under the parliamentary system, the government is a delegate of the assembly charged by it not only with the execution of existing laws, but with the preparation of new laws and the suggestion of reforms. To accord the same confidence, the same method of procedure to bills elaborated in this way and to bills which members may introduce individually would leave the way open to an excessive number of useless and sometimes dangerous proposals." [3] A government bill (*projet*), which may be introduced at any time, takes the form of a decree signed by the President of the Republic and countersigned by a minister. There can be no debate when it is introduced, no question raised as to its constitutionality. As a matter of routine it is printed and referred to the appropriate committee, for the Chamber feels itself bound to consider all

Government bills and private members' bills

[1] On the general subject of legislative procedure see Esmein, *Éléments*, pages 972–1053; Duguit, *Traité*, Vol. II, pages 328–364; Pierre, Secs. 58–81, 683–710, and 787–1058.

[2] Constitutional law of February 25, Art. 3.

[3] *Traité*, Sec. 691.

proposals of the cabinet. Not so in the case of private members. Over and over again, either by the president or by the Chamber when consulted by him, bills of private members have been refused consideration as conflicting with the rules, the laws, or the constitution.[1] Before the permanent committees were set up these bills had to meet a further obstacle. They were sent to a monthly committee called the committee on initiative which, considering their broader aspects, sifted the good from the bad and recommended to the Chamber that consideration should be accorded or withheld. This winnowing process has now been entrusted to the standing committees. Quite aside from the rules the leadership of the cabinet is so well respected that nearly all important bills originate with it; that when the Chamber desires legislation on a particular subject its usual course is not to proceed independently, but to invite the government to bring forward a bill; and that the committees commonly acquiesce whenever a minister suggests modifications in a private member's bill. Unless specially instructed by the Chamber, committees have a free hand in dealing with the bills referred to them. They may even substitute new bills.

Committee report

Every committee appoints a reporter whose business it is to explain and defend the committee's action.[2] He presents a printed report.

[1] Pierre, *Traité*, Secs. 63–64; also supplement, Secs. 63–64.

[2] The budget has a reporter for each division of the budget.

This contains not only the text of the measure as recast by the committee and arguments to support it, but also (though not always) the text of the measure as introduced, the explanatory documents, and the dissenting views of the minority. While the bill is before the Chamber the committee occupies a bench immediately facing the tribune and adjoining the bench occupied by the ministers. Three days after the distribution of the report debate may begin.[1] Under the revised rules of the Chamber there is only one reading of the bill (*déliberation*).[2] This involves first a debate on the general features of the measure. When this debate closes, the president consults the Chamber as to whether it wishes to pass to a consideration of the details. If the vote is affirmative, he reads each article in turn so that amendments may be offered clause by clause as in committee of the whole in British and

and a reporter-general who centralizes control and speaks for the whole committee when important decisions are taken in the Chamber.

[1] Under exceptional circumstances the Chamber may reduce the period to one day. In case of budget reports the normal period is eight days. (Rule 33 of 1915.)

[2] The Chamber may decide upon a second reading, but in that case the bill goes back to the committee which prepares another report substantially as if it were dealing with a new bill. (Rule 82.) The rules formerly prescribed two readings with five days intervening except in the cases of financial and local bills. But the second reading did not include general debate on the principles of the bill. Duguit, *Traité*, Vol. II, page 353.

American procedure;[1] and finally the whole bill, in its amended form, comes before the Chamber for passage or rejection. A negative vote on "passing to the articles" means that the bill is rejected and that it cannot be reintroduced during the next three months unless it is a government bill.[2]

Limitation of debate

Deputies who wish to take part in the debate apply to the secretaries beforehand and are "inscribed" in the order of their application.[3] But this requirement does not affect the ministers or the officials (president and reporter) of the committee concerned; they may speak at any time.[4] The president of the Chamber, having the list before him, adheres to the order of inscription except that he recognizes alternately, so far as possible, supporters and opponents of the bill. Though permitted to speak from their places,[5] deputies seldom do so unless suffering from ill health. They mount the tribune in order to face their audience; and, under the circumstances, with the members' seats rising above one another tier on tier and surmounted by crowded galleries, there is a strong temptation to indulge in oratory and play upon emotions. Questions cannot forever be pending in an assembly; they must be not only discussed but decided. If the minority enjoyed unrestricted freedom of speech, that right would be used to prolong debates and embarrass the government

[1] Rule 84 of 1915. [2] Rule 92.
[3] Rule 42. [4] Rule 43. [5] Rule 41.

in its effort to carry through its legislative program. A century ago the volume of legislation was relatively small and its character for the most part simple; but today, with the social and economic metamorphosis which has come in the wake of the industrial revolution, the Chamber has to deal with an enormous mass of technical and complicated problems; new laws must recognize and regulate conditions that have outgrown the existing body of law. There is a heavy tale of work to be done; and willful obstruction on the part of the minority cannot be tolerated. The Chamber, therefore, like other modern assemblies, has protected itself against such dilatory tactics. Whenever there has been debate — that is, whenever two deputies of opposing views have spoken, a motion to terminate the discussion will be entertained; and, in case of opposition to the closure, only one deputy will be recognized to speak against it.[1] The vote is first taken by a showing of hands, then, if the president is doubtful, by "seated and standing." If the result is inconclusive, the debate continues.

The quorum

Whenever a vote is taken in the Chamber, the presence of a quorum is required for its validity.[2] This quorum is an absolute majority of the full

[1] Rule 48. The closure cannot be applied while a minister or government commissioner desires to speak; and after he speaks one private member must be heard in reply. It might be noted that the closure is by no means a recent device in France.

[2] Rule 80; Pierre, *Traité*, Sec. 978 *et seq.* For debate no quorum is required.

membership as determined by the electoral law, vacancies not being deducted (in other words 314 of the 626 members); and a deputy physically present is counted present for the purposes of the quorum, although he cannot be compelled to vote.[1] The difficulty of maintaining so large an attendance may be gathered from a provision of the rules that, if a vote fails because of no quorum, the same question can be brought forward at the next sitting and decided irrespective of the number present; sometimes, to conform with this provision, the Chamber adjourns for fifteen minutes and then begins a new sitting.[2] According to the rules no deputies may be absent without the express permission of the Chamber; [3] but they so often ignore this formality that in 1909 a rule was adopted which required them to sign their names on entering the Chamber and held those who failed to appear through six con-

[1] In fact deputies cannot be compelled to vote even in cases of collective abstention provided that the abstentions are "spontaneous" (that is not concerted). Pierre, *Traité*, Secs. 1024–1026. Duguit, sometimes inclined to confuse what is with what ought to be, takes a different view. *Traité*, Vol. II, page 360.

[2] Duguit, *Traité*, Vol. II, page 360.

[3] Their requests for leave of absence go first to the bureau of the Chamber (secretaries, etc.) and from it, with recommendations, to the Chamber itself. Rules 128–129. The English and American practice of "pairing" (by which two men of opposite parties, agreeing not to vote on certain questions, may absent themselves without disadvantage to their parties) is not permitted. Pierre, *Traité*, Sec. 1023.

secutive sessions liable to a loss of salary.[1] This remedy, after a trial of two years, was abandoned.

Methods of voting

There are four methods of voting in the Chamber — raised hands, "seated and standing," public ballot (secret ballot having been abolished in 1885), and public ballot at the tribune.[2] If, on a show of hands, the secretaries do not agree as to the result, the president calls successively on the ayes and noes to stand. If the secretaries are again in disagreement, recourse is had to public ballot; and this method of voting must be used at the very outset when money bills are under discussion or when twenty members demand it in writing. Procedure in the public ballot is primitive and imperfect, opening the way to serious abuses and consuming a great deal of time. Each member has, in a compartment of his miniature desk, a number of ballots, some white and some blue, with his name printed upon them; the white ballots indicate an affirmative vote, the blue a negative vote. He places one of these in the urn or ballot box as it passes his seat. When the voting is finished, the secretaries count the white and blue ballots without, however, ascertaining who cast them.[3] Now although "the principle of the personal vote," as

[1] Pierre, supplement, Sec. 492.

[2] Rules 68–77. But the bureau of the Chamber is still chosen by secret ballot (Rule 78).

[3] In view of the time which this operation takes, the bureau of the Chamber proposed in 1884 that the ballots should be

a committee of the Chamber maintained in 1909,[1] "is strongly affirmed by the letter and spirit of the rules" and "the vote of absent members has never been recognized by any text whatever," proxy voting has prevailed for half a century. A deputy who is detained by political or social duties asks some friendly member to cast a ballot for him or, by way of being on the safe side, he asks several of his friends to do so. Half a dozen of his ballots may be thrown into the urn. Ballots are sometimes cast for absent members without their permission, and even for members who are present. One deputy complained that on certain occasions his vote had been lost because of another ballot's being cast for him in the opposite sense. President Brisson could do no more than "recommend to the deputies that they show less zeal in voting for each other and that, above all, when they do vote for each other, they take pains to discover beforehand the opinion of those whose mandate they assume without having received it."

The question of voting by proxy

For the past twenty years there has been an agitation to suppress proxy voting; but the Chamber clings to it tenaciously. Deputies must frequently be absent; they serve on the standing committees, attend political conferences, and

weighed instead of being counted. In 1890 a committee recommended voting by means of an electrical device. Pierre, *Traité*, Sec. 1042.

[1] Pierre, supplement, Sec. 1020.

once a week, perhaps, return to their constituencies to keep in touch with the local party organization. Should the electors, it is asked, be deprived of a voice in the Chamber through the temporary absence of the deputy? If so, there would be unfair discrimination in favor of Paris and the near-by departments where deputies can keep in touch with their local committees without neglecting the work of the Chamber. Moreover, if proxy voting were abolished, an active and disciplined minority might gain control of the Chamber at times and carry measures quite opposed to the views of the real majority. Such arguments not only find little support in the experience of other legislative bodies, but they overlook the fact that under the existing rules this minority may at any time insist upon a personal vote at the tribune. Nevertheless they have prevailed. All that the Chamber has done, while adhering to this system, is to protect itself against plural voting. When, after the ballots have been counted, the secretaries find that the majority is not more than thirty or, if the government has asked for a vote of confidence, sixty, they examine the ballots and accept only one for each deputy. This is called *pointage*.[1] Without

[1] Rule 75. Pierre, supplement, Sec. 144. Where both a white and a blue ballot appear in the name of a deputy both are rejected. *Pointage* may be demanded by twenty deputies before the result of the vote has been announced; the secretaries may under any circumstances resort to it.

pointage the public ballot is farcical; with it, too dilatory. As an alternative, fifty members whose presence must be established by roll-call may demand public ballot at the tribune.[1] This eliminates proxy voting. Each deputy, when his name is called, advances to the tribune and hands his ballot to a secretary. A mechanical apparatus registers the number of votes as the ballots are deposited in the urn.

Financial Legislation

Importance of the budget

The most important legislative activity of Parliament is in the field of finance.[2] The power of the purse, the control over the granting of supply to the executive branch of the government, must be regarded as a fundamental attribute of modern assemblies. It was mainly through the power of the purse that the English Parliament, after a protracted conflict, gained its ascendency over the executive; and wherever parliamentary institutions have been set up, the doctrine has been accepted that taxes can be levied and appropriations made only by virtue of law. That has been the doctrine in France ever since the adoption of the first written constitution in 1791.[3] Parliament, by refusing sup-

[1] Rule 76.

[2] On the general subject of the budget see: René Stourm, *Le Budget* (1909); Gaston Jèze, *Le Budget* (1910); Pierre, *Traité*, Secs. 511–545; Esmein, *Éléments*, pages 990–1017; Duguit, *Traité*, Vol. II, pages 380–396.

[3] Duguit, *Traité*, Vol. II, page 380; Pierre, Sec. 512.

plies, can always drive an executive out of office; in that way it drove out Rocheboüet in 1877.[1] And although such a violent specific will be used only in extremities, the discussion and passage of the budget each year give the deputies an opportunity to bring the administration under a searching and detailed criticism. By means of the annual budget Parliament exercises a very real control over the cabinet.

Its preparation

The budget[2] deals with two aspects of finance — the raising and the spending of money, revenue and supply. It takes final form in the finance act which, though the fiscal year begins on January 1, is hardly ever passed before the spring or summer of the year of its operation.[3] With the passage of the act the minister of finance begins at once to prepare the budget for the next fiscal year. He requests his colleagues to make known their needs, advising them that, unless the circumstances are exceptional, they should not ask for larger credits than Parliament has just authorized; and if, upon estimating the revenue for the next year, he finds that an equilibrium between income and outgo will be difficult to establish, he suggests possible reductions. He cannot

[1] Léon Bourgeois resigned in 1896 when the Senate refused credits for the Madagascar campaign.

[2] This word is derived from *boudgette* (little purse) and came into English usage in the time of Louis XIV; the French, reëstablishing parliamentary assemblies, took back the word in its English form.

[3] 1913, July 30; 1914, July 15.

himself enforce such suggestions; whenever a controversy arises, the decision rests with the cabinet alone; but the influence that he exerts in negotiations with the other ministers is very considerable.

Its content

After disagreements have been adjusted, the minister of finance presents the budget to the Chamber of Deputies. He explains the estimates and describes, in view of the financial condition of the country, how the necessary revenues are to be raised. The estimates are divided into, chapters,[1] each referring to closely-related services and each requiring a separate vote. Under a law of 1871 the executive cannot alter the destination of authorized credits by transferring them from chapter to chapter; they must be employed only for the purposes contemplated in the finance act. With the steady increase in the number of chapters, in the practice of appropriating supplies to specific objects, Parliament has been given a more effective control over expenditure.[2] The budget proposals deal in the second place with the raising of revenue. It has not been found convenient to embody all of these proposals in the finance bill. Direct taxes are authorized each year in a special measure which Parliament passes before adjourning in July; the

[1] For further details as to the form in which the estimates are presented see Duguit, *Traité*, Vol. II, pages 388–391.

[2] Between 1872 and 1892 the number of chapters rose from 338 to 829.

finance act does not emerge from Parliament for another six or eight months. This practice has been adopted because the general councils of the departments, meeting in the middle of August, cannot act upon the local budgets unless Parliament has already determined how many centimes may be added for local purposes to the national tax rates. Besides fixing the aggregate revenues applicable to the general budget, the finance act determines what indirect taxes shall be levied; all existing taxes lapse unless explicit provision is made for their maintenance.

Action by the budget committee

The proposals of the minister of finance go before the budget committee, the most powerful of the twenty-one standing committees. Not only the annual budget, but all money bills are referred to it. There are, of course, many bills which, without being classified as money bills, would have the effect of imposing charges upon the finances of the State; and the budget committee, while not having jurisdiction over these, must be invited to express an opinion on their financial provisions, an opinion which, with supporting explanations, is attached to the report of the committee in charge.[1] In dealing with the budget, the committee labors indefatigably for several months. It explores the minutest details; it seeks to expose administrative abuses everywhere. To accomplish the task subcommittees are set up as soon as general considera-

[1] Rule 32 of 1915.

tions have been disposed of, and to each is assigned a single branch of the government service. There was, even as late as the close of the last century, sharp criticism of the budget committee on the very ground that it carried its activities too far, being inclined to substitute its own conclusions for those of the government. "The committee pays hardly any attention to the budget prepared by the ministers," wrote Léon Say in 1896, "and considers itself charged with preparing the budget as if it were the minister. . . . The committee regards itself as a government, and the reporters are its ministers." [1] Such language would not apply to the practice that has prevailed in the last fifteen or twenty years, and especially since the adoption of proportional representation in the choice of committees. Only with great moderation and with the approval of the government does the committee now use its right of initiative.[2] Paul Doumer, when president of the committee in 1903, said: "The committee has a method which it follows rigorously; it does not accept proposed increases of credits made by our colleagues, whether or not they are members of the committee, without being assured previously that the government will make them its own." [3] In

[1] *Les Finances*, page 24. Léon Say could speak with authority, having been minister of finance.

[2] Jèze, *Le Budget*, page 226.

[3] Quoted by Jèze, *op. cit.*, page 226.

1905 the committee declared that, while the estimates for the war department were quite inadequate, it would not be proper to ask the Chamber to increase them unless the government agreed to ask for the additional revenues needed.[1] Collaboration with the government, as the president of the committee told the Chamber in 1907,[2] must be "absolutely loyal and complete." The disappearance of the old spirit of rivalry is seen in the persistent refusal of the committee to make special reports on private member bills which call for supplementary appropriations;[3] initiative is left to the government.

Debate on the budget

Eight days after the committee report has been distributed debate may begin in the Chamber.[4] The first stage is general debate in which questions of a broad nature are raised, such as the possibility of realizing economies and reforms; then, after the vote on "passage to the articles," [5] comes a close scrutiny of individual items, with criticism and amendment. This procedure is not always followed.[6] The Chamber, wishing to avoid unnecessary delay, may decide to postpone general debate and occupy itself at

[1] Pierre, supplement, Sec. 771.

[2] Pierre, supplement, Sec. 849.

[3] Pierre, supplement, Sec. 774.

[4] Or, if the Chamber votes urgency, twenty-four hours after.

[5] Each chapter of the budget is divided into articles which are examined separately, but voted *en bloc*.

[6] Pierre, *Traité*, Sec. 845.

once with the departmental budgets which are reported separately before the report on the budget as a whole has been presented. The government and the committee arrange, subject to the approval of the Chamber, the order in which the budgets of the various ministries shall be considered.[1] Throughout the discussions the minister of finance is the most prominent figure, speaking with the authority of the cabinet behind him and usually with the sympathetic accord of the committee. His colleagues will accept no amendments that reduce or expand credits without obtaining his consent.[2] Louis Barthou, when minister of justice in 1909, said in the Chamber: "You know very well that the initiative (in proposing a new credit) cannot come from me alone, I must have the support of the minister of finance." [2] Two years later the premier himself, Joseph Caillaux, declared that he must have the approval of the minister of finance before consenting to a reduction of credits.

Amendments offered by private members

There is no rule in France, as there is in England, which reserves absolutely to the government the right of initiating money bills and of proposing, by way of amendment to such bills, increases in the original figures. French authorities on finance regard this situation as very unfortunate. It involves, says Réne Stourm,[3] two

[1] Pierre, supplement, Sec. 847.
[2] *Id.*, supplement, Sec. 849.
[3] *Le Budget*, page 56.

grave abuses: it tempts deputies to play upon the interests and passions of the Chamber; it destroys the equilibrium of the budget. The terms "logrolling" and "pork barrel" may not be used in France, but the things they represent are familiar enough. The activity of private members is most pernicious on the eve of general elections when large sums may be added to the budget for obvious purposes.[1] In late years, however, there has been much improvement; usage tends to support the view which Léon Say expressed in 1877 that "supply bills should be reserved as far as possible to government initiative."[2] Indeed the rules themselves have not been unaffected by the growing impatience of the taxpayers.[3] In 1900 the Chamber adopted the famous Berthelot resolution which, notwithstanding many efforts to repeal it, still stands as Article 102 of the rules. Under its terms no private member may offer an amendment to the budget which would create new offices or pensions or increase existing pensions or salaries. At first deputies sought to circumvent the rule by presenting resolutions that invited the gov-

[1] Jèze, page 221. Gambetta wished, by constitutional amendment, to deprive private members of the right of initiating money bills. He found the cabinet unwilling to support him.

[2] Pierre, Sec. 66.

[3] Abolition of the parliamentary (i.e. private members') initiative became the chief demand of the Taxpayers' League. Stourm, *Le Budget*, page 57.

ernment to offer specific amendments. As such resolutions are now prohibited,[1] the deputy who wishes to reward or bribe his constituents at public expense must rely solely upon his influence with the government.

"Riders" no longer permitted

Another important reform was effected in 1913. French authorities agree that the granting of supply is not a legislative act in the strict sense and that it should not, directly or indirectly, bring about changes in existing law.[2] An institution established by law, they maintain, cannot constitutionally be suppressed by the refusal of the appropriations needed to maintain it; for the law, not having been repealed, must continue to be applied by the government. After some hesitation the chambers have accepted this principle. It is true that, by refusing supplies, they suppressed the Catholic faculties of theology in 1886, and the inspectors-general of superior education in 1888. But more recently, in 1903 and 1906, when the deputies took this indirect means of abolishing the office of subprefect (established by a law of the year VIII), they found themselves opposed both by the government and by the Senate and finally gave way.[3] It still would have been possible to achieve the desired object by attaching a rider to the finance act. Not only

[1] Rule 102.

[2] See, for instance, Duguit, Vol. II, page 390 *et seq.*, and Esmein, *Éléments*, page 990 *et seq.*

[3] Esmein, page 998.

private members but the ministers themselves have often been guilty of using that act as a vehicle for ordinary legislation;[1] a good example may be found in the provisions of 1907 which regulate the appointment of judges. The practice is unsound; once admitted, it tends to develop into a serious abuse; measures, which, if presented separately and considered on their own merits, would have little hope of success, may slip through almost unnoticed. The budget must be passed; it carries the riders with it. To correct this growing evil the finance act of 1913 provided:[2] "There can be introduced into the finance act only dispositions relating directly to revenue or supply, to the exclusion of all other questions."

Delay in passing the budget

The budget debates usually begin, not at the regular session, but at the special session which covers the last two or three months of the year. Under the most favorable circumstances it would be difficult to carry the budget through the two Chambers successively before the opening of the fiscal year on January 1. As a matter of fact proceedings in the Chamber of Deputies are unnecessarily protracted.[3] Skillful politicians, taking advantage of technicalities in procedure, wander far afield from the financial questions that are supposed to be under discussion. In 1906 it

[1] Pierre, *Traité* and supplement, Sec. 851.
[2] Article 105.
[3] Pierre, *Traité* and supplement, Sec. 845.

was pointed out that, while forty-seven days had been assigned to debate on the budget, only fourteen days had really been devoted to that purpose.[1] One of the chief causes of delay was eliminated in 1911 by the adoption of a rule that prohibits the interpellation of ministers on matters arising in the course of budget debates.[2] Even so the finance acts applying to 1913 and 1914 were not promulgated until July. The government must be tided over by votes on account. These votes, because they apply to one month or several months, are known as "provisional twelfths." At the request of the minister of finance Parliament places at the disposal of the government an aggregate sum which is distributed among the several departments by decree; whatever a department spends in this way is set off against the supply afterwards granted in the finance act. Paul Doumer, president of the budget committee, when reporting the provisional twelfths for 1910, said: "Save in exceptional cases, in the midst of great events which Parliament must consider to the exclusion of everything else, the vote of the provisional twelfths has no justification. It is an irregularity in our organization and financial legislation; and irregularity and disorder are always costly." [3] No one disputes this statement. The evil, recurring

[1] Pierre, *Traité* and supplement, Sec. 845.

[2] Rule 112 of 1915.

[3] Pierre, supplement, Sec. 537.

constantly, has given rise to proposals for a biennial budget.[1] But there seems to be a general opinion that the yearly voting of revenue and supply is necessary to safeguard the position of Parliament. "The Parliament which should vote a tax for more than one year, or the budget or supply or a part of it for more than one year would be doing an unconstitutional act," says Professor Duguit.[2] He bases that view upon a provision of the Constitution of 1791.

Audit of accounts

Parliamentary control over the national finances does not end with the voting of supply. After the close of each fiscal year the accounts of the executive departments are scrutinized.[3] The preliminary examination is made by the court of accounts, a court established in 1807 and consisting of one hundred and forty members of different grades. This court has jurisdiction over all officials who touch the public funds and makes report of malversation or other irregularities so that criminal prosecutions may be instituted. Naturally, therefore, it reviews the accounts of the various ministries, making report to the President of the Republic annually after May 1. Upon the rendering of the report a committee is

[1] Pierre, supplement, Sec. 512; Esmein, page 993; Duguit, Vol. II, page 390.

[2] *Traité*, Vol. II, page 380. But see Esmein, page 994.

[3] Pierre, *Traité*, Sec. 539; Duguit, Vol. II, pages 395–396; Esmein, page 997; Poincaré, *How France is Governed*, pages 275–276 and 320.

appointed by decree, its personnel drawn from the chambers, the Council of State, and the court of accounts. This committee makes an elaborate report to Parliament which finally passes a resolution (called the "law of accounts") as to the final auditing and closing of the previous year's transactions. The passage of this resolution, though apparently so important an affair, has become a mere formality.

Control of the Cabinet

In this chapter and elsewhere (especially in Chapter III) something has been said of the position which the ministers occupy over against Parliament. That position shows elements of strength and elements of weakness; and no doubt the chief source of weakness is the absence of any coherent and fairly enduring majority in the Chamber of Deputies. At this point it will be serviceable to consider some of the means which Parliament employs to keep the cabinet under control.[1]

Financial control

Perhaps the most effective means of control lies in the power of the purse — in the voting of the budget and in the examination of accounts. Opportunity is given for a detailed review of administrative conduct, for searching and insistent criticism, and for the punishment of executive derelictions in a very practical way. And out-

[1] Impeachment, as an ultimate resort, has already been touched upon.

side of money bills the business of legislation leaves the chambers free to harass cabinets or drive them from office by mutilating or rejecting first-class government measures. Legislative procedure permits the imposition of checks upon the executive in various other directions. Parliament may, for instance, require the government to communicate information (documents, statistics, etc.). Thus, under a statute of 1910, there must be published every five years a statement showing the remuneration of public employees and increases made in the five-year period; under another statute (1906) two members designated by each house shall be permitted to investigate conditions in the war and marine departments. Again, the Chamber or Senate may authorize committees to make inquiries into executive acts.[1] Before 1914 such committees had no power to compel the attendance of witnesses; but a law of that year fixes a penalty for failure to appear or refusal to take the oath.

Other means of control: the "question"

France has borrowed from England what is known as the "question."[2] In the House of Commons something like five thousand questions are addressed to the ministers each year. "They must," says President Lowell in his *Government of England*, "contain no argument, no statement of fact not needed to make their purport clear, and they must be addressed to that minister in the

[1] Pierre, *Traité* and supplement, Secs. 584–596.

[2] Pierre, Sec. 650 *et seq.;* Rules of 1915, Nos. 118–120.

House in whose province the subject-matter of the inquiry falls." The question, of which notice must be given a couple of days in advance, is printed on the question paper, and after the minister has replied to it, there can be no debate and no vote. The French adaptation differs very little from its prototype. The question may be asked orally if the minister has accepted it beforehand; or (since 1909) it may be put in writing and answered by the minister within eight days in the *Journal Officiel*, though the rules allow him, in the public interest, to refuse a reply, or to delay it because of difficulty in getting sound information. The chief point of difference lies in the fact that the deputy who has proposed the question has the right to reply in a summary fashion to the remarks of the minister. The question has not appealed very strongly to the chambers as an instrument of control. They prefer the interpellation.

The interpellation

The interpellation is itself a question, but a question that precipitates a discussion and a vote.[1] The deputy hands his interpellation to the president of the Chamber who, after reading it to the Chamber, communicates it to the

[1] Pierre, *Traité* and supplement, Secs. 656 *et seq.;* Duguit, Vol. II, pages 368 *et seq.;* Esmein, pages 1018 *et seq.;* Rules of 1915, Nos. 111–117. It appeared first in the Constitution of 1791, but was not recognized in later constitutions until 1830. Abolished in 1852, it was renewed in 1869 when Napoleon III liberalized the government. It has continued in use

minister whose department is concerned or, if the subject be one of general policy, to the prime minister.[1] The Chamber then fixes a day for debate. This day must fall within the period of the next month unless the question has to do with foreign affairs (when the cabinet may ask for indefinite postponement) [2] and, as a matter of fact, is normally chosen by agreement between the minister and the deputy proposing the interpellation. The latter opens the debate, developing his attack and demanding explanations; the minister replies; and although the closure may cut short debate after one deputy has spoken, usually there is a good deal of oratory and a determined effort seriously to embarrass the cabinet or even to force it out of office. Debate finished, there must be a motion to return to the order of the day which the interpellation has interrupted. This motion or order of the day, as it is styled in parliamentary language, may be "pure and simple" (for instance: "The Chamber, having heard the explanation of the minister, returns to the order of the day,") or it may be "*motivé*" (qualified), that is, it may embrace a qualifying clause which expresses approval or disapproval of the ex-

since that time, recognized in legislation and in parliamentary practice. Both Duguit and Pierre regard it as a logical consequence of ministerial responsibility — and this in spite of the fact that it does not exist in Great Britain or in the British Dominions.

[1] Under the rules (No. 111) an interpellation may be addressed only to the ministers.

[2] Rule No. 112.

planations. The "pure and simple" order of the day must always be put to vote first.[1] If it is defeated the Chamber may then have to make a choice between numerous *ordres du jour motivés* which show towards the government different degrees of friendship and hostility.[2] If the debate has gone badly for the government, its friends seek to extricate it from embarrassment by using adroit phraseology that will enable deputies to support it without sacrifice of conscience; and the opposition shows the same dexterity in framing orders of the day that will solidify all the separate and incongruous factions of dissent. The question of priority among the orders of the day is decided by the Chamber itself which then votes to accept or reject them. Sometimes, when the situation is highly complex, the various motions are referred to a committee — either one of the standing committees or a special committee elected by the bureaux. The choice which the Chamber makes, either directly or upon report of a committee, will indicate the final decision. If the decision is hostile, the cabinet may retire; it will feel bound to retire whenever the question at issue is really important. Writing in 1896, President Lowell observed [3]

[1] Rule No. 114.

[2] For an excellent illustration see Lowell, *Governments and Parties in Continental Europe*, Vol. I, page 121, note 1.

[3] *Governments and Parties in Continental Europe*, Vol. I, page 122.



AN INTERPELLATION DEBATE

that of twenty-one cabinets which had fallen in consequence of a vote of the Chamber ten had retired before hostile orders of the day or in the course of debate. Even when the cabinet holds its ground in face of an adverse vote on some question of detail and minor importance its prestige and its capacity for leadership are certain to be affected.

Criticism of the interpellation

Foreign observers have not looked kindly upon the interpellation. "Except in a despotism," says Lowell,[1] "the interpellation followed by a motion expressing the judgment of the Chamber is a purely vicious institution." His point of view is cogently set forth:[2] "A government would be superhuman that never made mistakes, and yet here is a method by which any of its acts can be brought before the Chambers, and a vote forced upon the question whether it made a mistake or not. Moreover, members of the opposition are given a chance to employ their ingenuity in framing orders of the day so as to catch the votes of those deputies who are in sympathy with the cabinet, but cannot approve the act in question. Now if adverse votes in the Chamber are to be followed by the resignation of the cabinet and the formation of a new one, it is evident that, to secure the proper stability and permanence in the ministry, such votes ought to be taken only on measures of great importance,

[1] *Op. cit.*, page 123.

[2] *Op. cit.*, pages 120–121.

or on questions that involve the whole policy and conduct of the administration." Similar criticism has come occasionally from French publicists. De Lanessan complains that the interpellation is employed, not to control executive conduct or to rectify it, but to get possession of office.[1] Ostensibly a cabinet is overthrown on some matter of policy, he says, but the Chamber will afterwards support with equanimity a cabinet which does nothing to reverse the policy of its predecessor. He regards interpellations merely as "circus tricks." Principles are of no moment. Crowds go to the Palais Bourbon making bets as at race tracks and subordinate the interests of France to the excitement of the immediate contest of maneuver and intrigue. De Lanessan goes so far as to suggest that all ministers should be chosen outside of Parliament so that their tenure would not depend upon the evanescent emotions which an eloquent speech may arouse.[2]

Such criticisms cannot lightly be dismissed. Undoubtedly the interpellation gives opportunities to the opposition: opportunities to concoct crises that do not really exist; to provoke debates that divert attention from the real business of government; to substitute for sane control of the cabinet a vexatious and perpetual nagging; and to maintain parliamentary life in an unwholesome and feverish activity. Worst of

[1] *La Crise de la République* (1914), page 285.

[2] *Op. cit.*, page 286.

all, perhaps, the time of the Chamber is spent in oratory when it should be spent in legislation. The president of the Chamber (Brisson) remarked in October, 1904, that in the past two years two hundred and sixty-two interpellations had been offered and one hundred and twenty-two debated.[1] In 1906, as has already been noted, only fourteen of the forty-seven days assigned to the budget were really devoted to it. Complaints have not been altogether without effect. Under a resolution of 1900, readopted after the elections of 1902 and 1906, but now abandoned, interpellations were limited to one day a week (Friday). This limitation was carried further in practice. While Combes was premier (1902–1905) and bent upon carrying his anti-clerical program, he found ways of stopping objectionable interpellations. The Republican *bloc* which supported him often made use of technicalities to check opposition schemes. They assigned to successive Fridays so many innocuous interpellations that those which might have injured the cabinet (and were therefore put in a subordinate place) as a rule never came to debate or vote. The success of such tactics when something like a stable majority existed in the Chamber seems to show that if the interpellation now contributes to the weakness of the cabinets, it does so because the cabinets, lacking assured support, are inherently weak; they succumb to germs that a vigorous

[1] Pierre, supplement, Sec. 659.

constitution would easily resist. "As a government has rarely a majority on which it can rely [Bodley's observation, though made a quarter of a century ago, reflects the conditions of today[1]] the House is not often in a disposition to deny itself its favorite diversion of seeing a minister baited."

Interpellations restricted, 1911

French authorities, however, generally regard the interpellation as a desirable counterpoise to the despotic tendencies of a highly centralized administration. Duguit[2] calls it "the chambers' chief means of action and the best weapon of minorities." Holding a like opinion, the Chamber of Deputies has dropped the Friday rule of 1900. But in view of the notorious delays in voting the annual finance act it has adopted one very important limitation. Under rule No. 112[3] no interpellation may take place in the course of the budget debates.

[1] *France*, book 3, page 234, in 1900 ed.
[2] Vol. II, page 370.
[3] Adopted in 1911.

CHAPTER VIII

LOCAL GOVERNMENT

Local autonomy restricted in France

FRANCE is, like Great Britain or Italy, a unitary state. All the powers of government reside in the executive and legislative organs at Paris; there are no competing authorities, no territorial divisions that Parliament cannot modify or obliterate at will. The form, the extent, the very existence of local autonomy depend upon statutory law. This offers a marked contrast to the federal system of the United States in which the constitution, itself subject to change only by an elaborate special process, entrusts certain specified powers to the national government and leaves the residuary powers (covering a much wider field) to the states. Federalism of some kind accords well with a stage of evolution in which full national consciousness has not been reached. The unitary France of today has evolved from feudal principalities which had separate laws, separate armies, separate diplomatic relations, and which were held loosely together by the recognition of a common suzerain, the Capetian king. By gradual degrees and under the play of economic forces local patriotism gave way and became reconciled with the idea of French unity. France is now a highly central-

ized state in which the powers of local officers (such as the mayors of communes) are defined by national law and in which their conduct is brought under detailed supervision.

Local areas

Of the local areas into which France has been divided — departments, arrondissements, cantons, and communes — only the first and the last deserve particular attention. The two others, which have no corporate personality and hold no property, exist mainly as electoral and judicial districts; in each canton (including on the average twelve communes) [1] the justice of the peace sits, and the councilors of arrondissement and department are elected; in each arrondissement (including on the average about eight cantons) the court of first instance sits.[2] In addition, the arrondissement has (1) a council, elected for a six-year term, which participates in the choice of senators [3] and distributes among the communes their proper share in the burden of direct taxes assigned to the arrondissement, and (2) a subprefect who is appointed by the minister of the interior and who acts simply as the agent of the prefect of the department in his rôle as central officer. With the vast improvement in means of communication the subprefect's office has less

[1] Large communes, however, may include several cantons.

[2] Until the adoption of the general ticket in 1919 the arrondissements were used as districts for the election of the Chamber of Deputies.

[3] See Chapter V.

reason for existence than it had at the time of its origin, late in the eighteenth century. "The subprefects were then like branches of a business firm," says Berthélemy.[1] "Branches are useless when it is infinitely easy to get to the main establishment." Instead of abolishing the office of subprefect, however, as the Chamber of Deputies has more than once sought to do by refusing appropriations for salaries, Professor Berthélemy would give him a wider discretion, making him less dependent upon the prefect.

Departmental Organization

Character of the departments

The departments are now eighty-nine in number.[2] The thirty-two royal provinces, with their separate historical traditions and their varying systems of customary law, were swept away by the Revolution of 1789. The National Assembly substituted the departments, artificial creations which bore new names taken mainly from rivers and mountains and which, like the *trittyes* of

[1] *Traité élémentaire de droit administratif* (Seventh edition, 1913).

[2] Alsace-Lorraine, recovered by the peace treaty of 1919 (June 28), was organized provisionally, by a law of October 19, as the departments of the Upper Rhine, the Lower Rhine, and the Moselle. This provisional arrangement did not affect the "territory" of Belfort, a part of Alsace-Lorraine which France retained after the war of 1870; but no doubt Belfort will eventually be incorporated in the department of the Upper Rhine. Since 1881 the departments of Algeria have been dealt with substantially as if part of continental France.

Athens, were designed to cut across whatever remained of provincial patriotism. Thouret, reflecting the passion of the time for uniformity, even proposed that the departments should be precisely of the same size — mere "astronomical expressions," as Stephen Leacock has styled the Middle-Western American states. They were, however, given irregular shapes, conforming to the natural features of the country, and varying areas. The Seine, which contains little territory outside of the city of Paris, has an area of only 185 square miles; the other departments run from 1381 square miles (Vaucluse) to 4140 (Gironde). Created by national law and subject to regulation by it, the departments resemble the American states only in the fact that they are the largest local-government units in the country. In the place of a popularly-chosen executive they have a prefect appointed by the national government and responsible to it. The council, elected under national laws, possesses very limited powers (for instance it cannot, like a state legislature, define property and crime); the courts, the schools, the main highways are national. The departments must be regarded as serving the purposes of national administration rather than those of local autonomy.

Decentralization

Many Frenchmen believe that centralization has been carried too far. The officials at Paris are overburdened; the administrative machine threatens to break down under the excessive

weight it carries; and with restricted powers the local legislative bodies do not give enough room for the growth of a healthy spirit of self-government. Proposed reforms incline either to "deconcentration," which would give local agents of the central ministries more independence and initiative, or to "decentralization," which would enlarge the scope of local autonomy. It seems possible that in the near future the departments may be superseded by twenty or thirty "regions" each with an assembly of its own and boundaries determined by social and economic factors. In the summer of 1919 the Chamber of Deputies endorsed "regional reform." [1]

The prefect, whom the minister of the interior appoints, and may at any time transfer, place on half-pay, or remove,[2] is at once the agent of the central government and the executive head of the department in the administration of local

[1] See Jean Henessey, *La Réorganisation administrative de la France* (1919); articles in *La Revue politique et parlementaire* for November, 1910, by C. Beauquier and A. Brette; and J. W. Garner, "*Administrative Reform in France*," *American Political Science Review*, Vol. XIII (1919), pages 17–46.

[2] Strictly speaking the prefect is nominated by the minister and appointed by decree. Measured by French standards he receives a large salary — 18,000 to 35,000 francs. A law of 1911 has grouped the prefectures into three classes on the basis of salaries paid and has provided for automatic increases of salary. The prefect is entitled to a pension when he has served 30 years and reached the age of 60; and because of his precarious tenure he is not required to contribute to the pension fund. He may be placed on half pay for a certain

Double rôle of the prefect (1) as local executive

affairs. In the latter rôle he appoints all employees of the department, initiates all measures which come before the general council for consideration, and carries out the resolutions of the council. In his dealings with the departmental authorities he is master rather than servant; for his tenure is dependent, not upon them, but upon the minister of the interior, and the council, whose meetings he attends, can discuss only such matters as he chooses to bring to its attention.

(2) as agent of the ministry

In his rôle as agent of the central government the prefect's duties are manifold.[1] He must transmit information and complaints, give effect to ministerial instructions, direct state services within the department, control the subprefects and mayors (the latter being agents of the state for many purposes), and supervise local administration. Though directly responsible to the minister of the interior, he is obliged to be in correspondence with at least six other members of the cabinet with regard to state services. His activity extends to such miscellaneous matters as education, sanitation, agriculture, highways, the public domain, taxation, and police — the police power having within its range the regulation of such matters as hunting and fishing, theaters,

length of time without loss of pension rights. Hauriou, *Précis de droit administratif*, page 238; Berthélemy, *Éléments de droit administratif*, page 130.

[1] Berthélemy, *op. cit.*, pages 131 *et seq.*; Hauriou, *op. cit.*, pages 241 *et seq.*

newspapers, and public assembly. He appoints several hundred officials, such as school-teachers, tax-collectors, letter-carriers, and postmasters. In the government of the communes he makes his will felt more by the arts of persuasion than by the exercise of formal authority; but this authority, which has been widened somewhat by ministerial decrees and by decisions of the Council of State, is quite extensive, including as it does the right to suspend communal officers (even members of the council) for not more than one month, to pass upon proposed increases in communal debts, to increase or reduce any item on the revenue side of the annual budget, and to reduce proposed appropriations.

Usually bound by instructions

In the exercise of some of his powers the prefect has a free hand; he proceeds upon his own responsibility without needing to secure approval beforehand or afterwards; and his acts may be annulled or corrected only on the ground of illegality. In most cases, however, — as when he executes national laws and decrees — he is bound by detailed instructions. The traffic regulations which one reads while traveling through a dozen departments are signed by a dozen different prefects; but they have a striking family resemblance; they are, in fact, couched in precisely the same language. Deconcentration has made no headway in recent years; rather the reverse; railroad and telegraph have brought the remotest prefect very near to the minister at Paris. Never-

theless, the prefect is a very powerful as well as a very busy official — the real pivot of the administrative system.[1]

His political activities

As agent of the central government the prefect finds himself involved in activities that are altogether outside the routine of administration. The ministers whom he serves are politicians, often far more preoccupied with political concerns than with state business; and he is the medium through which the minister of the interior keeps in touch with the local situation and "makes" the parliamentary elections every four years. He exerts himself in the municipal elections also, both because these test the strength of the national parties and because he is naturally anxious to secure the success of candidates who will coöperate harmoniously with him when they are in office. It must not be forgotten that he has a great deal of patronage to dispose of. Cases occur, of course, where the prefect, belonging to a different political party, will not let himself be used and where the minister thinks it inadvisable to transfer or remove him on the eve of the campaign. A new prefect, unacquainted with his surroundings and lacking local prestige, would be of little value in political intrigues. Nor does public opinion acquiesce as readily as it once did in the sacrifice of experienced officials to partisan exigencies.

In the discharge of his multifarious duties the

[1] Munro, *The Government of European Cities*, page 60.

His clerical staff and advisory council

prefect is assisted by a considerable headquarters staff. He has a confidential assistant known as "cabinet chief"; a general secretary appointed by the minister of the interior, who directs the several bureaux in which the employees are grouped; and a council of three members associated with him in his functions as national officer. Besides acting as an administrative court, as described in Chapter XI, the prefectoral council examines certain accounts (those of receivers of taxes, for instance), authorizes communes and departmental institutions to commence legal proceedings, and advises the prefect. On a good many matters the prefect is bound to consult his council; and though he need not follow its advice, he finds it politic to do so in important cases, as where the acts of a communal council are to be annulled or changes made in a communal budget.

His difficult position

It is obvious, even from this casual glance at his position, that the prefect should be a man of ripe experience and of unusual accomplishments. His position is, indeed, one of peculiar difficulty. "Today," says Hanotaux,[1] "placed between universal suffrage, which really rules, and the central power, which wishes to govern, he is between the anvil and the hammer. Since he is concerned in everything, he concentrates in his own person the perpetual conflict of authority and freedom.

[1] Quoted by P. W. L. Ashley, *Local and Central Government* (1906), page 82.

He reports to the authorities the demands of the crowds, and to the crowds the needs of the authorities. There is no question now of the old high-handed prefects who led the mayors as a colonel leads his regiment. The prefect no longer commands; he simply requests. More than any other official he must dictate by persuasion. He is at once the agent of the government, the tool of the party, and the representative of the area which he administers. Yet he must remain impartial, foresee difficulties and disputes, and remove or mitigate them; conduct affairs easily and quickly, avoid giving offense, show the greatest discretion, prudence, and reserve, and yet be always cheerful, open, and a good fellow; he must always be accessible, speak freely, and in his official position be neither affected nor churlish. . . . He is in daily contact with the elected representatives of the government, senators, deputies, councillors of the department and arrondissement, mayors, and communal councillors; he is assailed by all the various ambitions, claims, demands, frauds; he is bombarded at short range by the local Press, much more daring and less indulgent than the Press of Paris; and he is obliged to pay attention to and conciliate all the opinions, interests, and jealousies which rage around him or which turn towards or upon him." Evidently he must have, as Ashley observes,[1] tact, talent, skill, patience, resignation,

[1] *Op. cit.*, page 81.

and a long preliminary training in the office of subprefect.

The general council of the department

Associated with the prefect in conducting the affairs of the department is the general council, a body elected by universal suffrage for a term of six years, one-half of the members retiring every three years.[1] As each canton returns one member, the size of the council depends upon the number of the cantons in the department; the largest general council has sixty-seven members, the smallest seventeen. No salaries are paid. Aside from special sessions,[2] the council meets twice a year, the spring session lasting not more than two weeks and the summer session not more than one month. It is in the summer session [3] that the budget of the department is voted, direct taxes apportioned among the arrondissements, and the accounts of the prefect examined. Were it not for this financial control, the powers of the council would seem very meager indeed; they relate to matters of departmental concern (such as the maintenance of public buildings and highways) and to a few cases where its approval is required in communal administration (such as changes in boundaries or increases in the tax-rate). Within the range of its powers

[1] Elections occur simultaneously throughout France.

[2] Called by the central government or by two-thirds of the members.

[3] It begins normally in mid-August, but (under a law of 1907) may be postponed until October 1.

the council is limited by the fact that business can come before it only on the initiative of the prefect and that its decision, while final in regard to some questions, in regard to others either requires the approval of the central government before it takes effect or, taking effect without such approval, may be vetoed by the government within a period of three months. The council is not permitted to make representations of a political character to the central government; its only political function is participation in the election of senators. It may be dissolved at any time.[1]

There is also a departmental committee of four to seven members elected by the general council at the close of its summer session. This committee meets at least once a month, the prefect being entitled to share in its deliberations. It handles whatever business the council delegates to it and at the same time has original powers of its own. It examines the prefect's monthly statements of expenditure. It reports to the council on the tentative budget framed by the prefect.

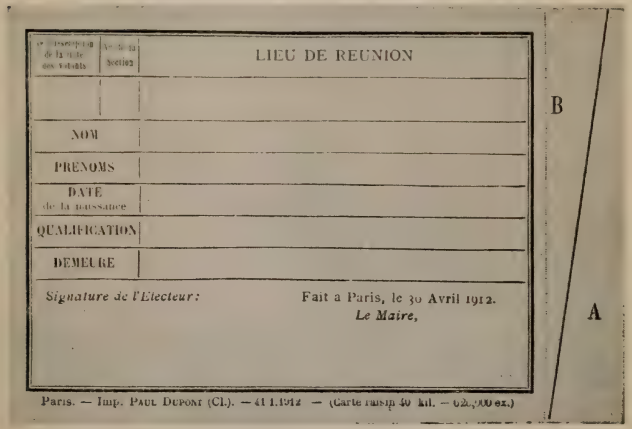
Communal organization

Variation in size of the communes

The communes are the fundamental units in administration and self-government, with a history looking back far beyond the period of revo-

[1] By the central government. If parliament is in session the date of the new elections is fixed by statute; otherwise they occur on the fourth Sunday after dissolution.





THE ELECTORAL CARD

See page 175

lutionary reconstruction. They were not arrested in their natural development and forced into a uniform mold by the legislators of 1789. They differ greatly in area and population. They may cover several acres or several thousand acres. More than half of them have a population of 500 or less.[1] Only Paris, Marseilles, Lyons, and Bordeaux exceed 250,000 in population. What Levasseur calls the "fatal attraction" of the cities has not been so marked in France as in Great Britain, Germany, or the United States.[2] France remains predominantly an agricultural country in which the land is cultivated by peasant proprietors; and with a low birth-rate the increase of population is very slight.[3]

Uniformity of organization

Although the communes are so unequal in size, the framework of their government reflects the French inclination towards system and uniformity. The municipal law or code of 1884 applies alike to hamlets of fifty inhabitants and to large cities like Marseilles or Havre.[4] The code provides for a council of one chamber elected by universal suffrage and for a mayor and one or more adjoints (department heads) chosen by the

[1] According to the census of 1911 the number was 19,270 out of a total of 36,241 communes.

[2] Only 2,717 communes are classified as urban; that is, as having a population of over 2,000.

[3] The net increase was less than 350,000 between 1906 and 1911.

[4] A translation of the code will be found in the appendix to Albert Shaw's *Municipal Government in Continental Europe*

council from among its own members. Paris alone stands outside this scheme.[1] Such uniformity may at times entail disadvantages. "The machinery of local government in France," observes Munro,[2] "is undoubtedly too complex and cumbrous for the thousands of small communes, most of which, like the English parishes, are too diminutive to serve properly as administrative units. On the other hand, it is perhaps not elaborate enough for the largest municipalities." The code does, however, classify the communes according to population in fixing both the size of the council and the number of adjoints.

The communal council

The council is a small body, with a minimum of ten members (where the population is 500 or less) and a maximum of 36 members (where the population is over 60,000). Its size varies according to a graduated scale, there being eight classes between the two extremes.[3] It is elected for a term of four years. The quadrennial elections, occurring simultaneously in all communes on the first Sunday in May, are conducted very much like the national elections described in Chapter VI. The voters' list is compiled, the vote cast and counted in the same way; the same

[1] Certain modifications have been made in the case of Lyons which has a larger council and more numerous heads of departments than the code provides for in other communes.

[2] *The Government of European Cities*, page 14.

[3] Lyons, with a council of 54, and Paris, with a council of 80, are the only exceptions. See Article 10 of the code.

principles are applied in disqualifying as candidates certain officials (such as prefects, judges, school-teachers) whose position in the commune might enable them to exercise undue influence in the election,[1] and in requiring certain other officials within ten days of their election as councilors, to relinquish their offices or retire from the council.[2] As in national elections, corrupt practices (personation, bribery, etc.) come within the jurisdiction of the criminal courts; but in the case of alleged irregularities the validity of an election is determined by the prefectoral council from whose decision appeal may be, and often is, taken to the highest administrative court, the Council of State.[3]

Municipal elections

The procedure in municipal elections differs from the procedure in national elections chiefly in the fact that there is no provision for minority representation. The *scrutin de liste* or general ticket is employed in its simple form. The meaning of these terms has already been explained.[4]

[1] The mayor, adjoints, and councilors, however, though acting as election officers, are not disqualified.

[2] The same rule applies to persons directly connected with the providing of public utilities or direct partners to a municipal contract.

[3] Any qualified voter may petition for the annulment of the elections within five days, the councilors affected by the petition being allowed another five days to file their reply. If a question of fact is involved, the prefectoral council makes an investigation. Elections are never annulled for mere technical violations of the law.

[4] See Chapter VI.

In a commune of ten thousand, let us say, where twenty-three councilors are to be elected, the commune is treated as a single constituency and each voter expected to vote for twenty-three different candidates. This is a heavy burden to impose on the electorate, though not such a burden as overwhelms citizens of the United States when, after a confused campaign, they have to decide upon the qualifications of candidates for twenty or thirty offices ranging in importance from coroner to mayor or even governor. Only one office is filled by election in the commune, the office of councilor. The voter does not as a rule prepare his own ballot. If he is a loyal party man, he accepts a printed ballot which has been placed in his hands, either at his home or outside the polling-place, by a party worker. Under the circumstances the strongest among the competing parties is likely to win all the twenty-three seats. It will do so unless a considerable number of its adherents split their tickets (crossing out some of the names and substituting others) because of antipathy to certain designated candidates, or unless two or more of the weaker parties, entering into a bargain, combine their strength on a composite ticket.[1] Such combinations frequently occur when the strongest

[1] Sometimes an independent candidate will distribute printed ballots differing from the party ticket only in the substitution of his own name for the name of one of the regular candidates.

party has not commanded a majority of the votes in the first election and a second election therefore becomes necessary.[1] Broadly speaking, however, the general ticket tends to give domination to a single party, to leave minorities unrepresented in the council; and this tendency grows more emphatic as the national parties strengthen their organization, enforce stricter discipline, and appreciate more fully the part which local elections can play in keeping the combative spirit alive in the rank and file. It is idle to maintain that municipal government, being a matter of business rather than policy, should not be regarded as a proper field for competition between national parties which are concerned primarily with national issues. Clearly enough the economic doctrine of the Socialist party applies to the commune; and if the Socialist party is determined to fight, the other parties can hardly be expected to stand aloof. Minorities find themselves more favorably situated in some of the larger cities where, by virtue of a provision of the municipal code,[2] a modified form of the district ticket is used. Any commune with a population of more than ten thousand may be divided into districts,[3]

[1] In the second election a plurality suffices. [2] Article 11.

[3] Not by the local authorities, but by the general council of the department whose decision may be modified by the Council of State — a procedure which prevents gerrymandering. The district boundaries, when once fixed, are seldom changed; with the shifting of population the number of seats assigned to each district is increased or reduced.

each district electing (by *scrutin de liste*) at least four members of the council. This compromise between the general ticket and the district ticket opens the way to a certain degree of minority representation (because the minority is often concentrated in a particular section of the commune) and at the same time avoids the danger of ward politics which the small single-member district is not unlikely to develop.

Limitations upon council's powers: (1) not in control of administration

From a first casual glance at the municipal code one would suppose that the council, as the direct offspring of universal suffrage, had been invested with a very wide range of authority. It "regulates by its deliberations the affairs of the communes," says the code. "It votes on all subjects of local interest." The actual powers of the council, however, are less extensive than this general language suggests. Its competence is limited in two directions. In the first place it is not an administrative body like the English borough council which, through standing committees, manages every municipal department, even making appointments to the civil service. Under the French system the business of administration — and this covers a great part of the whole field of government in the communes — rests with the mayor and adjoints. It is true that these executive officers are chosen by the council from among its own members, that they continue to serve as members after election to office, and that they are unlikely therefore to

pursue any course which the majority seriously opposes. Nevertheless, their subordination, wherever it exists, is not due to restraints in the law; the council has no means of compelling obedience — even its financial control is far from complete, and it cannot discipline them or remove them from office. "A standing committee in a French council," to quote Dr. Albert Shaw,[1] "consults, advises, and keeps itself informed, and it may exercise a considerable influence over the action of the mayor and adjuncts; but it does not act of itself." The function of the council is to formulate policy; the function of the executive is to put this policy into operation.

(2) approval of higher authorities required

A second limitation upon the competence of the council is found in the fact that, as regards some of the most important concerns of the communes, its decisions take effect only when approved by the higher authorities.[2] Without such approval, for instance, it cannot make leases for more than eighteen years, grant franchises for public utilities, borrow or appropriate money, alter or abolish streets, buy or sell communal property. Usually the "higher authority" is the prefect; but in the case of franchises it is the general council of the department, and in the case of the budgets of large communes (where the estimated revenue exceeds three million francs) the cabinet acting on the advice of the

[1] *Municipal Government in Continental Europe*, page 175.

[2] See Article 68 of the code.

minister of the interior. A brief description of budget procedure will serve to illustrate the somewhat restricted functions of the council. It is the mayor who prepares the annual budget and who, having presented it to the council, defends and justifies it at every stage of discussion. After passing the council it goes to the prefect (or, under the condition mentioned above, to the minister of the interior) accompanied by the annual reports of the mayor and treasurer, the minutes of the council bearing on the budget, and other apposite documents. Financial experts make a searching analysis. With full information before him the prefect decides. He has the right to reduce any appropriation and either to reduce or increase any item on the revenue side of the budget. Moreover, the code gives a long list of obligatory appropriations — for the taking of the census, the conduct of elections, the payment of debts;[1] and where any one of these is omitted the prefect must insert it. A recalcitrant council may be suspended for a month by the prefect or dissolved by the ministry; but the occasion for such drastic action is likely seldom to occur.

Meetings of the council

The council does not meet at frequent intervals, as the custom is in Great Britain and America. It holds four regular sessions each year, in February, May, August, and November. The May session, in which the budget is con-

[1] Article 136 of the code.

sidered, may last six weeks; the other sessions only two weeks. This arrangement would be as absurd and inconvenient as the analogous restrictions laid upon the American state legislatures were it not for the fact that the regular sessions may be extended by the prefect and that special sessions may be called at any time by the prefect or mayor and must be called on the demand of a majority of the councilors. Perhaps the framers of the code felt that frequent meetings would tend to exalt the council at the expense of the mayor. The mayor presides — except when his official statements are under discussion. He is also chairman ex-officio of all standing committees; and even though he often assigns the adjoints to take his place on particular committees, close contact between the executive and legislative branches, with all the obvious advantages which flow from it, is still maintained. The members of the council serve without pay, as do also the mayor and adjoints.

The mayor and adjoints

"The mayor alone is charged with administration," says the code;[1] "but he may, under his supervision and responsibility, delegate by order a part of his functions to one or more of his adjoints" or, when the adjoints are unable to act, to other members of the council. The number of adjoints varies from one (for communes of 2500 population or less) to 12,[2] towns of 2500

[1] Article 82. [2] Lyons, by special provision, has 17.

to 10,000 having two, and larger towns having an additional adjoint for each 2500 inhabitants in excess of 10,000. The council elects both mayor and adjoints.[1] This method of choice, while tending to secure a sympathetic accord between the executive officers and the council, may not result so happily in the relations between the mayor and his deputies (adjoints). The mayor is responsible for the whole administration; he is responsible for the operation of those departments which he places under the charge of adjoints, although he did not appoint the adjoints and cannot remove them. In case of disagreement or open conflict two remedies are available. The mayor, who is not required by the code to delegate his functions, may assign no duties to an insubordinate adjoint or he may, by application to the prefect, secure his suspension or removal. Both the mayor and adjoints may be suspended by the prefect for one month (a period which the minister of the interior may extend to three months) or removed by decree.

The mayor's double rôle: (1) as agent of the ministry

Someone has said that France is governed by the mayors of the thirty-six thousand communes. The mayor is, indeed, invested with so many important functions, that, notwithstanding the restraints laid upon the exercise of his powers, he has the means of making himself a veritable political boss. In a large city he may, if pos-

[1] By secret ballot, an absolute majority being required until the third ballot.

sessed of marked ability and force of character, become a figure of national prominence; but on the other hand, by giving wide discretion to his adjoints and allowing the council to encroach upon the administrative field, he may subside into the position of a figurehead. Only a broad description of the mayoral powers can be given here. The mayor, like the prefect, has to fill a double rôle. Just as the prefect, appointed by the central government, acts both as its agent and as executive head of the department, so the mayor, appointed by the council, acts in the commune both as its executive head and as an agent of the central government. In the latter rôle the mayor performs his duties quite free from interference by the council, but subject to the supervision of the higher authorities. These duties are numerous and varied. They involve an immense amount of detailed work in connection with matters regulated by national law — for example, poor relief, direct taxation, the registration of voters, military service, vital statistics, primary education, and the quinquennial census; and they have been much increased in late years by social legislation. In the enforcement of national laws within the commune the mayor issues many ordinances, giving to the general language of the laws a detailed application; but in the exercise of this delegated legislative power he is always bound closely by instructions from the prefect who may even draft the ordinances himself.

(2) as communal executive

As an officer of the commune the mayor has both legislative and executive functions. He presides at meetings of the council. As chairman ex-officio of its standing committees he takes part, either personally or through his adjoints, in reviewing the work of the administrative departments and preparing reports. He issues ordinances not only for the enforcement of resolutions passed by the council, but also, under the police power, for the protection of life and property. The prefect may suspend or annul such ordinances;[1] private individuals may question their validity before the administrative courts; and when any person is prosecuted for violation of an ordinance, the ordinary courts will acquit him, as noted in Chapter XI, if they find that the ordinance was not "legally made."

As the executive head of the commune the mayor represents it in legal proceedings and on ceremonial occasions. He manages the municipal property. He conducts the municipal services. In the business of administration full responsibility rests with him;[2] and it is the function of the council, not to direct him in matters of detail, but to formulate the broad lines of policy

[1] In such cases the mayor has the right of appeal to the Council of State.

[2] In the management of the police, however, the discretion of the mayor is much limited. The organization of municipal police is described at the end of Chapter XII.

which he is to follow. Evidently this is the system that the code was intended to establish. But, as it is often hard to decide just where the domain of policy-determination ends and the domain of administration begins, the council can, with colorable pretext, seriously curtail the mayor's freedom of action unless the higher authorities intervene. Nor is it certain that the balance of power between the mayor and council will always remain as it is. By the growth of custom and precedent and without any formal change in the law the time may come when the committees of the council will supplant the mayor in supervising the work of the administrative departments.

Employees of the commune

The employees of the commune, high and low, are (with a few exceptions) appointed by the mayor and by him disciplined or removed. The council has no voice in the matter. In large cities where the merit system, the holding of competitive examinations to test the relative capacity of candidates for office, has made some headway, the scope of the appointing power has been much reduced. Even where the merit system does not obtain, the mayor's patronage is less extensive than might be supposed. Vacancies seldom occur. The civil servants are not swept out of office with each change of administration; custom has given them something like a permanent tenure; and an employee who believes that he has been unjustly removed

may seek redress before the Council of State and perhaps secure an award of damages against the commune. The treasurer and police commissioner are appointed not by the mayor, but by the central government; and the mayor can appoint or remove no police official without the concurrence of the prefect. Attracted by the security of tenure and (in large cities) the prospect of retirement pensions, able and conscientious men have entered the civil service of the communes. It is their trained intelligence which keeps the machinery of administration working smoothly. "Herein," says Dr. Shaw,[1] "lies the explanation of much that puzzles many foreign observers, who cannot understand how to reconcile the seemingly perfect system of French administration in all matters of practical detail with the rapid and capricious changes in the highest executive posts."

The government of Paris

Paris, the capital city and metropolis, is not governed like the other communes. Two circumstances have made some deviation from the uniform scheme of the municipal code advisable. In point of size Paris is exceptional, covering as it does nearly the whole area of the department of the Seine and having five times the population of Marseilles, the next largest city. It has been convenient therefore to blend departmental and communal institutions. The general council of the department is simply the Paris council with

[1] *Op. cit.*, page 27.

additional members representing the two arrondissements outside the city limits, and executive authority in both commune and department has been entrusted to two prefects, one of whom deals solely with police administration. Again, as the seat of the national government Paris has been improved and beautified at national expense, adorned with palaces, monuments, and art galleries. The government must have adequate means of protecting its material interests as well as the social order from the recurrence of such sudden revolutionary outbreaks as have often manifested themselves in Parisian history. Local autonomy therefore has been given less play than in other communes. This is seen mainly in the fact that the executive officers (the prefect of the Seine and the prefect of police) are appointed not by the council, but by the central government.

The municipal council

The municipal council is chosen for a four-year term by district ticket. Relatively speaking it has a large membership, four councilors being elected from single-member districts in each of the twenty arrondissements included within the city limits. Although supposed to serve without pay, each councilor draws an annual sum of twelve hundred dollars under guise of "expenses"; and for reasons of expediency the minister of the interior has acquiesced in a practice which, as the Council of State has held, is clearly unauthorized. The powers of the council resemble those of the ordinary municipal councils. Since it does not

choose the executive officers, however, it is less likely to exert an effective influence upon them.

The two prefects

The prefect of police possesses the combined police powers of a mayor and a prefect. He is responsible not only for the maintenance of order, but also for the regulation of traffic, the enforcement of sanitary rules, and many other matters that the French regard as coming properly under the scope of police administration. Likewise the prefect of the Seine, who receives a salary of ten thousand dollars, allowance for expenses, and a residence in the city hall, combines in his person the functions of a mayor and a prefect, excepting only the police power. "There is, in fact, a greater concentration of administrative power in the hands of the prefect of the Seine," says Professor Munro,[1] "than in those of any other local official in France, or, indeed, in any other country." Naturally he must be a man of wide experience and proved capacity, and one who has sufficient tact and diplomacy to maintain harmonious relations with the shifting cabinet ministers, the municipal and departmental councils, and his colleague, the prefect of police. In practice both prefects, though subject to removal at any time, have held their places for long terms.

The city employees

The civil service in Paris includes, besides what may be termed the headquarters staff, a local staff in each of the twenty arrondissements.

[1] *Op. cit.*, page 97.

"These twenty divisions," as Albert Shaw has pointed out, "make it easy to distribute and apportion the numerous administrative tasks that bring the government into contact with the people." They are the units for school administration, the registration of voters, civil marriage, the keeping of vital statistics, poor relief, the collection of taxes, and much besides. In each a mayor and several adjoints, appointed by the government and serving without pay, perform a vast amount of routine work as subordinates of the prefect. There is no elective council in the arrondissement, but many citizens serve on advisory commissions which, with the mayor or his adjoints presiding, discharge important functions in regard to such matters as public education and poor relief.

CHAPTER IX

POLITICAL DEVELOPMENT[1]

First legislature

WHEN the first legislature chosen under the new constitution met in the spring of 1876, the monarchists controlled the Senate, the Republicans controlled the Chamber. This general situation had been expected. The surprising feature of the elections was the strength developed by the Republicans. They came within two or three votes of having a majority in the Senate.[2] They won more than 360 of the 533 seats in the Chamber.[3]

[1] For brief outlines in English, see *Encyclopædia Britannica* (11th ed., 1910), Vol. X, pages 873–906 (by J. E. C. Bodley); E. A. Vizetelly, *Republican France* (1913); C. H. C. Wright, *A History of the Third French Republic* (1916). G. Hanotaux's *Contemporary France* (4 vols., translated) covers only the early years of the Republic. In French see L. Hosotte, *Histoire de la troisième République, 1870–1912* (2 volumes; has clerical sympathies); E. Maréchal, *Histoire comtemporaine de 1879 à nos jours* (3 vols., 1900); and E. Zevort, *Histoire de la troisième République* (4 vols., 1896–1901).

[2] The reactionaries, having a majority in the National Assembly which chose the seventy-five life senators, and being able to exert administrative pressure upon the electoral colleges which chose the other 225 senators, had hoped for better things; but because of the quarrels between Legitimists and Orleanists, the Republicans got 57 of the life seats. The elections of 1879 gave them control of the Senate.

[3] It is not possible to determine the group affiliations of all the deputies. Roughly speaking the Bonapartists won as

Party groups in the Chamber

The chief Republican groups, receiving their titles from the position of the seats assigned to them, were the Extreme Left, the Left, and the Left Center. Léon Gambetta, who led the Extreme Left, had put forward a radical program in 1869 (the "Belleville Program") which advocated the separation of church and state, elective judges, and the income tax. His fervent patriotism, his eloquence, his energy and courage gave him a hold on the hearts of the masses; but many prominent Republican politicians disliked his radicalism, envied his popularity, or suspected him of harboring dangerous ambitions. The Republican Left included such men as Jules Grévy, Jules Ferry, and Charles de Freycinet, who were Republicans by conviction and not recent or half-hearted converts. The Left Center, including only some 50 members, represented the bourgeois liberalism which had flourished under the July monarchy. Its leaders were for the most part men of mature years, like Thiers (born 1797) and Dufaure (born 1798). They favored a Republic from motives of expediency and wished the Republic to be conservative. For several years, while the future still seemed uncertain, their policy of caution and conciliation gave them great influence. The first two

many seats as the two other monarchist factions combined. The Orleanists were weakened by the defection of more than twenty deputies who, styling themselves Constitutionalists, decided to accept the Republic.

premiers, Dufaure and Simon, were drawn from the Left Center.

Hostility to the Republic

Soon after its organization, the new government had to face a serious crisis. Jules Simon, who became premier at the end of 1876, while friendly to the church, was not friendly enough to suit the bishops. These urged upon France, hardly recovered from the disasters of 1870, the obligation of making war upon Italy and restoring the temporal power of the Pope. Behind this religious agitation, which grew more and more intense, political propagandists were at work. The monarchists, seeing an opportunity to embarrass the Republic, joined forces with the clergy. The Count of Chambord declared that "every enemy of the church is an enemy of France," and the clergy took no pains to disguise their sympathy with his cause. This alliance of ultramontanes and monarchists proved unfortunate for the church. Republicans, or at least Republicans of radical temper, came to accept Gambetta's phrase: "Le cléricalisme, voilà l'ennemi." A generation later, after prolonged conflict between church and state, René Viviani, the minister of labor, declared proudly, "We have extinguished lights in heaven that shall never be relit."

The Seize Mai

The crisis of 1877 is known as the "Seize Mai." On May 16, Jules Simon was informed that, in view of certain votes taken by the Chamber without the approval of the cabinet, he no longer

enjoyed the confidence of President MacMahon. He resigned immediately — the tone of the President's letter permitted no other course — and was succeeded by the Orleanist de Broglie. While MacMahon's action did not violate the letter of the constitution, it was, in view of the excited condition of the country, at least profoundly impolitic; and it could hardly seem consonant with the principles of responsible parliamentary government since Simon held office, with an overwhelming majority, by virtue of an election which had occurred only fifteen months before. Only in one way could the President vindicate himself and keep the new cabinet in office: by dissolving the Chamber of Deputies and making a successful appeal to the electorate. On June 25, with the consent of the monarchist majority in the Senate, the Chamber was dissolved. In the autumn elections however, notwithstanding administrative pressure and clerical pressure, the Republican majority was reduced but slightly. De Broglie resigned. MacMahon then appointed, not one of the majority leaders (as parliamentary usage required), but a military man, General Rochebouët, whose reactionary cabinet included not a single member of Parliament. This autocratic step gave rise to apprehensions of a *coup d'état* and led the Chamber to refuse supplies. After two or three weeks of complete deadlock Rochebouët resigned. His retirement meant the collapse of monarchist

schemes and humiliation for MacMahon, who now found it necessary to invite the moderate Republican Jules Dufaure to form a ministry. MacMahon's position was very uncomfortable because, having tried and failed to hand the administration over to the reactionaries, he had no further means of making his personal wishes prevail over the cabinet. When Dufaure began to republicanize the army by placing five generals on half pay and transferring five others, the President resigned. He was succeeded by Jules Grévy, a septuagenarian, who had been president of both the National Assembly and the Chamber of Deputies, a loyal Republican of spotless reputation, but not a man of much force. The Republicans now controlled the presidency and both Chambers.

Political changes

Meanwhile, modifications had been taking place in the political groups of the Chamber. (1) The various elements of the right had consolidated in the struggle of 1877. Their conflicting claims now dropped into the background; they called themselves conservatives and became less insistent in advocating the restoration of monarchy. (2) The Left Center had begun to decline in importance, their mildly sympathetic attitude towards the church having brought them into discredit with the other Republican groups who favored an anti-clerical policy. (3) Gambetta, without abjuring the Belleville program, had abandoned it for the time as impracticable, and substituted "a policy of results

for a policy of chimeras." He declared himself an opportunist, ready to govern according to the exigencies of the moment. Gradually his followers fused with the Republican Left and assumed the name of Opportunists (Moderates after 1889, Progressists after 1898, and recently Republican Federation). Down to the formation of the Waldeck-Rousseau cabinet in 1899 the Opportunists constituted the most numerous and powerful group in the Chamber.[1] (4) A part of the Extreme Left, unwilling to abandon the Belleville program, had become known as Radicals. They attacked their old leader, Gambetta, and also Jules Ferry who had been guilty of remarking that "the danger is on the Left." The most aggressive spirit in this group was Georges Clemenceau (afterwards became prime minister, 1906–1909, and 1917–1920).[2] Other eminent members were Charles Floquet and Henri Brisson. The Radicals steadily advanced in strength (except in the elections of 1889) and dominated the government during the first decade of this century.

[1] In a period of twenty years, all but half a dozen of the twenty-seven cabinets were headed by Opportunists or by men who shortly became known as such. But the anti-clerical policy of Waldeck-Rousseau brought about a cleavage, the larger faction supporting the premier and entering groups further to the Left.

[2] Sometimes called "the destroyer of cabinets" because he helped to overthrow eighteen of them in fifteen years. See H. M. Hyndman's *Clemenceau* (1919).

Anti-clerical legislation under Jules Ferry

The Republicans, having put Jules Grévy in the place of MacMahon and having temporarily crushed the hopes of the monarchists, now turned their attention to the church. They wished to curb the power of the clergy and prevent a recurrence of the intrigues of 1877. The religious orders, firmly intrenched in the schools, molded the future citizens of the country and zealously instilled anti-Republican sentiments. With few exceptions these orders had no legal standing; they had never secured from the government the authorization which all associations must have. Jules Ferry, the minister of public instruction, proposed to exclude their members from teaching in the schools; and when the Senate rejected a vital part of his bill, he proceeded to dissolve the unauthorized orders by decree. This was the first phase of the anti-clerical movement which culminated under Waldeck-Rousseau and Combes. If the orders had given way at this juncture, France might have escaped some of the bitter antagonisms of later years; but in defiance of law they managed to reorganize after dissolution and to continue their work as teachers. They also denounced as godless Ferry's new system of elementary schools in which education was compulsory, gratuitous, and non-sectarian, and this in spite of the fact that provision was made for religious instruction by priests.

Ferry's name is also identified with the awaken-

ing of new imperialistic ambitions in France. He believed in colonial expansion as a means of restoring national prestige; and although this policy involved France in controversies with other states, it gave her finally an overseas empire second only to that of Great Britain.[1] Tunis naturally attracted French interest because of its neighboring Algeria; and in 1881, certain border raids being taken as pretexts, a French protectorate was established there. Italy, also interested in Tunis, felt aggrieved and in consequence entered the Triple Alliance with Germany and Austria-Hungary in 1882. Cordial relations between France and Italy were not restored for twenty years. It was Ferry also who, while premier in 1883, annexed Tonkin and Annam, thus greatly extending the possessions acquired in Indo-China two decades earlier. This period also marks the forward movement of France in the Congo and in Madagascar; but her refusal to coöperate with Great Britain in suppressing disturbances in Egypt (1882) assured British ascendency there and, since Egypt had appealed strongly to the French imagination from the time of Bonaparte's expedition, tended to create a feeling of antagonism between the two colonial powers.

Colonial expansion under Jules Ferry

[1] On the French colonial possessions see H. Busson, *Notre Empire colonial* (1910); C. Humbert, *L'Œuvre français aux colonies* (1913); and Victor Piquet, *La Colonisation française* (1912).

Failure of Gambetta, 1881

The elections of 1881 gave the conservatives, or reactionaries, only some 90 of the 547 seats in the Chamber; the Radicals, 46. While the split between the Radicals and Opportunists had definitely taken place, the Republican Left (186 deputies) had not yet coalesced with Gambetta's followers (204 deputies). Gambetta, who had been president of the Chamber for three years and who had exercised from the chair an "occult power" (as Clemenceau termed it), now became prime minister. There had been prophecies of "a great ministry," a ministry of all the talents which would unite the Republican factions. The men of established reputation, however, regarded Gambetta with jealousy or distrust. They held aloof. Gambetta's cabinet, drawn exclusively from his personal followers, did not commend itself to the country, although it included young men of great promise, such as the future premiers Waldeck-Rousseau and Rouvier. It maintained itself only ten weeks.[1] Several things contributed to the fall of Gambetta: his attempt to deprive deputies of their patronage in the civil service, his passionate interest in the army and promotion of able officers irrespective of politics, his proposal to reform and subordinate the Senate, and his insistence on a new system of electing the deputies — the general ticket. But opposition to Gambetta's policies

[1] Nov., 1881, to Jan., 1882. Gambetta died on Dec. 31, 1882, from an accidental revolver shot, at the age of 44.

was merely an excuse offered in palliation by the politicians who overthrew him; these very men reformed the Senate and established the general ticket after his death.[1] They feared Gambetta because he was so dynamic, a man of force and compelling enthusiasm. The cult of incompetence and mediocrity which Georges Sorel supposes to be inseparable from democracy had already set in.[2]

"Concentration" and "pacification"

The elections of 1885 were the first and, until 1919, the only general elections conducted under the general ticket (the election of all the members from each department upon a general ticket having been substituted for single-member districts by a law of that year). The extreme groups, Conservatives and Radicals, profited by this new arrangement, securing respectively about 180 and 150 seats.[3] Henceforth the Opportunists (about 250 seats) were unable to govern alone. As a rule cabinets were formed by a "concen-

[1] Gambetta proposed to abolish the single-member districts and substitute large districts in which several members should be elected. This system is described in Chapter VI.

[2] Ernest Dimnet in *France Herself Again* (1914) says, "If the Third Republic has produced but few men of great civic virtue, it has not produced many who were remarkable either for their eloquence or their political capacities. . . . The roll of premiers, when one reads it over from the first days, sounds like a list of incarnations of mediocrity."

[3] The death of Gambetta and dissatisfaction with Ferry's colonial policy contributed to this result by weakening the Opportunists.

tration" of the two main Republican groups, Radicals and Opportunists. The alternative was "pacification" by which one Republican group governed with the help or toleration of the Conservatives, this implying abandonment of anti-clerical measures. Rouvier formed the first pacification cabinet in 1887. In that year Grévy, who had been reëlected to the presidency in spite of his advanced age, was forced to resign because of scandals involving his disreputable son-in-law, Daniel Wilson, and his steadfast refusal to believe in Wilson's guilt or to expel him from the Élysée. His successor was, not Jules Ferry, the most prominent Republican statesman, but a compromise candidate, Sadi Carnot. So, too, the American Whigs chose Harrison instead of Clay for the election of 1840 — Harrison's grandfather signed the Declaration of Independence; Carnot's grandfather was the "organizer of victory." Neither Grévy nor Carnot were men of action; and so the tradition of effacement and torpor began to entwine itself about the French presidency.

Boulanger crisis

The presidency of Carnot (1887–1894) was notable for two crises which left a deep impression on French political life and upon the fortunes of French parties — the Boulangist movement and "Panama." The Boulangist movement came very near to ending the Republic. Boulanger, the youngest general in the army, had won rank and honors by distinguished serv-

ice in the field; he had been wounded in the war of 1870, in Indo-China, in Algeria. As minister of war, 1886–1887, he became the most prominent person in the country. His truculent attitude toward Germany led Bismark to observe that he was a menace to the peace of Europe and made him at the same time the idol of French chauvinists. "Throughout her history France has shown a taste for strong men," says Dimnet, as many others have said; and for the moment the martial figure of Boulanger suggested the strong man who was needed to recover the lost provinces for France, restore her credit in the eyes of Europe, her unity of spirit, her belief in herself. His extraordinary popularity alarmed the politicians. They kept him out of a new cabinet formed in 1887 and sent him to command an army corps far from Paris and from the German frontier.

Boulanger's alliances

Boulanger now entered upon a series of intrigues. His secret maneuvers and the singular alliances which he contracted indicate that, like Louis Napoleon, he was playing for his own ends. He was everything to every man. At the outset the Radicals entered into close and secret relations with him, meaning to embarrass the Opportunists. The noisy patriots supported him because he would recover Alsace-Lorraine; the Bonapartists, because he stood for the Napoleonic plebiscite; the Royalists, because he promised the restoration; the clergy, because the Royalists

did and because Boulanger let it be known that he would tolerate no religious persecution (that is, anti-clerical measures). Although several Jews were prominent in his entourage, he sometimes posed as an anti-Semite and thus took advantage of a campaign against the Jews which had got well under way with the publication of Drumont's *La France juive* in 1886. The enormous sums of money which he spent came from the Count of Paris (now the Royalist pretender) and from a duchess devoted to the Royalist cause.

His success in the elections and his sudden collapse

He spent lavishly in building up a political organization and in flooding constituencies with campaign literature (including portraits of himself on horseback). Whenever a by-election occurred, he became a candidate; and, as the general ticket had been in force since 1885, all the voters of a department participated in each by-election. Hundreds of thousands of votes were cast; it was the plebiscite, taken by departments. Finally in January, 1889, came his most striking triumph. He was elected in the Seine (Paris) by 244,000 votes against 179,000 for his two opponents, and in spite of the great efforts put forth by the cabinet. At that moment, apparently, he might have marched on the Élysée and made himself dictator. He let the moment slip by. Perhaps he was under obligations which held him back; perhaps he expected greater triumphs in the general election of 1889; more probably he suffered from indecision of char-

acter. At any rate he failed to strike. Soon afterwards he was a fugitive in England, convicted in his absence of conspiracy against the state. That same year, fearing the appearance of some other "man on horseback," Parliament restored the district ticket.

In the quadrennial elections of 1889 no great changes were manifested. The Opportunists, now called the Moderates, gained somewhat; the Conservatives, while losing twenty or twenty-five seats, stood very close to a new group of Nationalists or Boulangists which included more than forty deputies. The chief losses were incurred by the Radicals whose strange association with Boulanger had done them much injury. Not only were their numbers reduced by a third, but their claim to represent the most extreme political doctrine was disputed on the Left by a new group of seventeen Socialists.

Panama scandal

Shortly after the collapse of Boulangism the Republic had to confront another menacing situation. There had already been some evidence and much gossip of political corruption; and now, at the close of 1892, a scandal was brought to light which cast its shadow on many reputations. In 1883 a French company had begun to construct a canal across the Isthmus of Panama. Through extravagance and gross mismanagement it fell into such straits that, in the hope of preventing disclosures, lavish subsidies were paid to newspapers and Parliament was persuaded,

apparently by the purchase of votes, to authorize the raising of over $100,000,000 by means of a lottery. In 1892, after the failure of the lottery and the collapse of the company, one of the Nationalist deputies asserted that a Jewish banker had, on behalf of the company, distributed $600,000 among a hundred and fifty deputies. Two other Jews of German origin were said to be concerned in these operations. Conservatives, Nationalists, and anti-Semites made the most of the Panama revelations. They disseminated every rumor and innuendo tending to compromise Republican politicians. Men like Rouvier, de Freycinet, Floquet, were driven from office; Clemenceau lost his seat in the Chamber. There was much talk of a mysterious list of 104 deputies who had been bribed. The truth was never fully revealed; the politicians escaped with nothing worse than damaged reputations. But since some charges had been proved and other charges appeared only too plausible, "Panama" bred a deep-seated distrust of politicians. It helped to bring about that cynicism and disillusionment which seems to be sapping the vitality of the democratic régime in France as in other countries.

The Ralliés or Republican Catholics, 1893

The country was still agitated by the "Panama" charges when the election of 1893 took place. The Right (Conservatives), that had hoped to make capital out of the discrediting of Republican politicians, met with reverses; it

carried only about 65 constituencies. Some of its former strength had been drawn off by the foundation of a new group known first as the "Ralliés" and later as the "Action Libérale Populaire."

In the Seize Mai and in the Boulanger episode the Church had maintained its old alliance with the monarchist cause whose leaders were exploiting the Church for political ends and identifying it with reaction. The liberal-minded Pope, Leo XIII, was under no illusions; he saw that the French people would cleave to the Republic and that an anti-Republican Church would steadily lose ground. In 1892, just after the Count of Paris had declared that Christianity could be saved only by a restoration of monarchy, he issued an encyclical urging Catholics to "rally" to the Republic. Most of the Royalist leaders received this appeal with ill-disguised contempt. Count Albert de Mun and Jacques Piou, however, organized a campaign in 1893; and though both were defeated in the elections, some thirty of their followers entered the new Chamber as Ralliés. The Republicans were frankly sceptical. They regarded the movement as an effort to penetrate the Republican camp and give it over to the enemy.[1] For some time the Ralliés increased in

[1] Perhaps there was ground for this suspicion. Fifteen years earlier, a church dignitary had suggested a similar strategy to the Count of Chambord. Vizetelly, *op. cit.*, page 282.

strength and gave support to moderate ministries (such as that of Méline, 1896–1898). They became a more important group than the Right; but the conflict between the church and the state in the early years of the century interrupted their development, temporarily at least.

Rise of the Socialist Party

The elections of 1893 also brought the Socialists into prominence. Although the Socialists of this period belonged to many shifting factions rather than to a party, they had made themselves felt in French politics for a decade or more. A few Socialists found their way into the Chamber; in 1889 (as already mentioned) as many as 17. In 1893, having used "Panama" as a sad example of bourgeois mismanagement, and having condemned the severity of the administration in dealing with labor disturbances that year, they won 50 seats. Among their leaders were Guesde, Jaurès, Millerand, and Sembat. Alexandre Millerand laid down the Socialist program at Saint-Mandé in 1896: Nationalization of all means of production and exchange as soon as the time should be ripe for such a transformation; Socialist control of the government by means of universal suffrage; and an international understanding among working people. This did not go far enough to suit all Socialists; but it was accepted as a minimum program even by the devoted Marxian, Jules Guesde. Some of these Socialist deputies were already familiar to the Chamber as Radicals of yesterday. The Radicals sometimes found it

difficult to remain Radicals without becoming Socialists. Their leader, Léon Bourgeois, condemned the Saint-Mandé program. "I am not a collectivist," he said, "because there is no agreement between the French Revolution and the ideas of the collectivists, which are un-French in their origin." But already some of the Radicals, while adhering to the principle of private property, were ready to go part way with the Socialists. They began to style themselves Radical-Socialists.

Homogeneous cabinets of Bourgeoi and Méline

The Moderates, with nearly three hundred deputies, remained by far the most powerful group. But "Panama" had produced discords and removed some of the old leaders. New men now came to the front: Casimir-Périer, Raymond Poincaré, Louis Barthou, Paul Deschanel, and Charles Dupuy. The differences between the Moderates and the Radicals were accentuated by the repressive measures taken against the anarchists in 1894. For a time an experiment was made with homogeneous ministries, that is, ministries drawn from a single party: Bourgeois (Radical) 1895–1896, Méline (Moderate) 1896–1898. Of course, such ministries could hold office only with the support of outside groups secured by legislative favors and promises.

Presidential elections occurred in 1894 and 1895. Towards the end of his term Sadi Carnot was assassinated at Lyons. This tragic event came as the culmination of a long series of

The Presidency: Casimir-Périer and Faure

anarchist outrages which had led many to believe in the existence of a vast anti-social conspiracy. It greatly strengthened conservative tendencies for the moment and made possible the election of Casimir-Périer, youngest and ablest of the Presidents. Like his father and grandfather he had held high political office; but at the same time he was engaged in large business enterprises and ranked as one of the richest men in France. He possessed exceptional force of character, an imperious will, and a fighting spirit which was not well suited to the restricted functions of the presidency. He remained in office only six months. Subjected to abuse and slander in the press,[1] kept in the dark by his ministers as to the most important transactions, he withdrew from the Élysée in disgust. Faure succeeded him (January, 1895), the son of a carpenter, who (with the help of a legacy) had made an ample fortune as a dealer in hides. He was a vain man who wished to magnify his office, not by autocratic behavior toward the cabinet, but by courting popularity and making the Élysée once more the center of social life. His vanity was indulged by the visit of the Czar and Czarina in 1896 and by his own visit to Russia in 1897. It was on the latter occasion that the Dual Alliance between France and Russia was first formally announced to the

Alliance with Russia

[1] His treatment of labor in the Anzin mines had earned him the title of "The Vampire of Anzin."

world. This alliance between democracy and despotism came as the necessary answer to the formation of the Triple Alliance (Germany, Austria, and Italy), and the provocative attitude of Germany. Although offensive to the Socialists, it did give increased security to France and removed something of the apprehension which had haunted the country since 1870.

In the early '90's it seemed that an era of reconciliation was beginning. Spüller, when minister of public instruction in 1894, spoke eloquently of the "new spirit" of benevolence which was to obliterate old animosities and usher in the reign of justice and common sense. The Moderates, indeed, showed a disposition to accept the proffered hand of the Ralliés. Unfortunately, just at this juncture the country was rent by a new convulsion, the most severe and most disastrous which the young Republic had experienced.

The Dreyfus affair

In 1894, Captain Alfred Dreyfus, an Alsatian Jew, was convicted by court-martial of betraying military secrets to a foreign power. At first the conviction passed unchallenged except by his family and friends. But gradually — through the efforts of courageous and disinterested men, such as Colonel Picquart, Senator Scheurer-Kestner, and Émile Zola — startling facts were brought to light which seemed to indicate that guilt had been fastened upon Dreyfus in order to divert suspicion from a disreputable

soldier of fortune, Major Esterhazy, and that men in high places were deliberately suppressing the truth in order to protect the "honor" of the army. In the face of widespread suspicions, which tended to become more definite, the charges against Esterhazy could not safely be ignored; he was brought to trial and acquitted — by order, Zola declared. Soon afterwards the minister of war made a speech before the Chamber in which he sought, by means of new documentary proofs, to quiet any remaining doubts of Dreyfus' guilt. The Chamber was convinced; the speech was placarded throughout France; and then, to the confusion of the anti-Dreyfusists, it transpired that the documents had been forged by Colonel Henry, head of the intelligence department of the war office. Henry cut his throat. Esterhazy fled. Although Dreyfus, granted a new trial, was convicted again, the court discovered extenuating circumstances, imposed a very light sentence, and recommended mercy. The government granted a pardon (September, 1899). In other words, the rancorous controversy which by this time had divided France into two hostile camps, was to be set at rest by compromise, a compromise calculated to soothe the Dreyfusists and at the same time save the face of the army. The Dreyfusists did not accept this solution, however; they demanded complete vindication. In 1906, after the Court of Cassation had set aside the second verdict, Dreyfus was

restored to the army with the rank of major and decorated with the cross of the Legion of Honor.

Its political effects

Naturally the Dreyfus affair had important political effects. It was utilized, says Bodley,[1] "by the Reactionaries against the Republic, by the clericals against the non-Catholics, by the anti-clericals against the church, by the military party against the parliamentarians, and by the revolutionary Socialists against the army. It was also conspicuously used by rival Republican politicians against one another, and the chaos of political groups was further confused by it." Every one took sides. The most significant aspect of the controversy was the close alliance between army and church — the army which had blundered into condemning an innocent man and which, to disguise its mistake, had denounced every accusation as dictated by unpatriotic motives; the church, which had in every other crisis (such as the Seize Mai and the Boulanger affair) shown its hostility to the Republic and whose clergy and newspapers now gave passionate support to the army. Both army and church suffered for this. Republicans, except those of the conservative sort, became pacifists and (to put it mildly) anti-clericals. They formed a combination known as the *bloc* which purged the army of its reactionary officers, freed the

[1] *Encyclopædia Britannica*, eleventh edition, Vol. X, page 883.

schools of ecclesiastical domination, and effected a complete divorce between church and state.

Elections of 1898 and the Waldeck-Rousseau cabinet

It was not the elections of 1898,[1] occurring as they did before the dramatic suicide of Henry, but the subsequent developments of the Dreyfus affair that led to the new political combinations. The elections had made no marked changes in the complexion of the Chamber. While the Right lost some twenty seats, the Ralliés, or Action Libérale Populaire (who had much in common with the Right), gained eight seats, and a new group of Nationalists (former Boulangists and anti-Semites) won twelve or fifteen seats. Among the Republicans, the Progressists (or Moderates) were weakened by successes of the Radicals and Radical-Socialists (now 178 deputies) and the Socialists (now 57 deputies). For a time it was uncertain what kind of a majority could be held together in support of a cabinet. Méline, who had been premier since 1896 with a homogeneous ministry of Moderates, was forced out of office when he allied himself with the Right, a resolution of the Chamber declaring that the government should rely upon "an exclusively Republican majority." He was followed by Brisson (Radical cabinet) and Dupuy (Republican concentration cabinet). In the meantime (February, 1899) the election of

[1] Parliament, finding the autumn elections inconvenient, had postponed the election period from September, 1897, to May, 1898.

Émile Loubet as President, upon the death of Félix Faure, was interpreted as a victory for the Dreyfusists. The reactionaries, who felt that France was escaping them, made hostile demonstrations; they assaulted Loubet at the Auteuil races; a few months later they actually conspired to overthrow the Republic. There were ominous signs of insubordination among officers of the army. It required a strong hand and a definite policy to check such manifestations. In June, 1899, Waldeck-Rousseau formed his cabinet of "Republican defense."

"Republican defense" differed from "Republican concentration" in the fact that it implied a policy of retaliation against the enemies of the Republic in army and church. It implied also a wider sweep to the Left. Not only were Radicals brought into the cabinet; the Socialist Alexandre Millerand, author of the Saint-Mandé program, became minister of commerce and industry. This union of the groups of the Left — a few revolutionary Socialists and somewhat more than half the Progressists held aloof — soon came to be known as the Republican *bloc*. It lasted till 1905 when the Socialists, refusing further coöperation with bourgeois governments, withdrew.

The Associations Law, 1901

Waldeck-Rousseau was not opposed to the church, but to those elements in the church which were most active in propaganda against the Republic — the religious orders, and espe-

cially the Jesuits and Assumptionists. He carried through Parliament (1901) the Associations Law. This law, designed primarily to authorize trade unions, dealt specifically with the religious orders as well. The orders could be authorized only by statute; they could, after authorization, be dissolved by decree; and no member of any unauthorized order could conduct any educational establishment or teach in one.

It cannot be said that the elections of 1902 gave evidence of enthusiasm even for this mild anti-clerical measure. In the new Chamber the ministry had a majority of little more than 50 votes, the Progressists — led by Méline, Ribot, and Charles Dupuy — having allied themselves with the opposition.[1] On June 6 Waldeck-Rousseau resigned. Because of his forceful personality and sound judgment, perhaps still more because of the formation of the *bloc*, he had held office longer than any premier under the Third Republic — almost three years. Ill health and the prospect of an embittered struggle compelled him to retire. His mantle fell upon Émile Combes who lacked both the force of Waldeck-Rousseau and his broad vision.

Combes had, as the fortunes of French premiers go, a long tenure of office (1902–1905); but

[1] The government forces included 48 ministerial Republicans (former Progressists), 228 Radicals and Radical-Socialists, and 45 Socialists; the opposition forces, 45 Nationalists, 33 Right, 50 *Ralliés*, and 140 Progressists.

during that period he was less the leader than the servant of the majority. Under Waldeck-Rousseau the four groups of the Left (Democratic Union or Ministerial Republicans, Radical Left, Radicals and Radical-Socialists, and Socialists) had begun to act through a joint committee, the Delegation of the Lefts. Under Combes that committee usurped the direction of policy. "The cabinet during the three years he held office," says Dimnet,[1] "was purely a name; the heads of parliamentary groups, meeting regularly the prime minister and informing him in advance of the pleasure of their adherents, did duty for the ministers." "Every day the cabinet would meet as usual at the Élysée, and the routine of government seemed just the same as ever; every day also a consultation of a much more practical character was held at the Chamber in the premier's office. There M. Combes met the chiefs and whips of the various groups, not, of course, in the whole Chamber, but in the majority; submitted to them the order of the day, took their opinions, made sure by a very simple calculation of the number of votes that each opinion represented, and decided upon ministerial action accordingly." [2]

Combes and the Republican *bloc*, 1902–1905

In his attitude towards the church, Combes was prepared to go much further than Waldeck-Rousseau. He had studied for the priesthood;

Combes and the church

[1] *France Herself Again*, page 62.

[2] Dimnet, *op. cit.*, page 115.

he had written an essay on St. Thomas Aquinas; and now he hated the church with a deep and abiding hatred. Perhaps he represented the dominant temper of the country. The hostile reception which the church had given to the Associations Law, a legitimate and even a generous measure, seemed to show that the time for moderation was past. If extreme counsels prevailed under Combes, the church — mixing in politics, inculcating anti-Republican doctrines, refusing to recognize the claims of modern liberalism — clearly must bear a large share in the blame. Combes acted with severity. He used the law to suppress rather than to regulate the religious orders, easily persuading the chambers to refuse authorization and afterwards, in the face of resistance on the part of the monks and their sympathizers as well as disobedience on the part of certain army officers, closing some fifteen hundred establishments.

Separation of church and state

It was Combes who took the first steps toward the separation of church and state. He had become involved in disputes over the appointment of bishops, the visit of President Loubet to the King of Italy (which gave great offense to Pius X), and other matters. A complete breach of diplomatic relations ensued. Papers seized in the papal legation showed that the nuncio had been intriguing actively in French politics. It was this situation that persuaded Combes to propose the denunciation of the Concordat of

1801, an agreement between Napoleon I and the Pope, settling the terms of union between church and state. The Separation Law, which was adopted at the close of 1905, nearly eleven months after the fall of Combes, was largely the work of the Socialist Aristide Briand who reported it from committee. Under this law the government gave up all right to nominate or appoint bishops, guaranteed pensions to aged priests, and left the churches in the hands of local associations which the clergy could form very much as they saw fit. The Roman Catholic Church was simply given a status such as it had in England or in the United States. The Vatican might have dampened the zeal of its enemies by a ready acquiescence; but ignoring the fact that a great part of the French people had come to distrust the church and even repudiate the form of Christianity that the church taught, Pius X refused to recognize the law. His bitter attacks upon the government merely strengthened anti-clerical feeling. The elections of 1906 gave the opposition, which included 66 Progressists of the Méline school, only 174 of the 591 deputies. The four groups supporting the government controlled 343 votes. Further to the left were the independent Socialists (22 deputies) and the Unified Socialists (52 deputies), groups which, in 1906, no longer adhered to the *bloc*.

The Combes ministry was pacifist as well as

Pacifist propaganda

anti-clerical. It was, after all, under the control of the Socialists who, by threats of secession, could exact terms for their continued support. Jaurès, the Socialist leader, was in a position to dictate the cabinet policy, on certain points at least. The Socialist belief in pacifism and internationalism found in Combes a ready convert who allowed the red flag instead of the tricolor to be displayed on official occasions and the "Internationale" to be played instead of the "Marseillaise." Throughout the country, indeed, patriotism was at a low ebb. It was said that the absorption of France by another State would be no calamity for the people; a professor in the Superior Normal School condemned patriotism before his classes and was not reprimanded. Never had belief in the fraternity of nations been so complete. "War appeared as a barbarous impossibility," says Dimnet,[1] "and the chief preoccupation of the ministers of war and marine was to civilize the army and navy, turn the ships and barracks into institutions for the civic perfection of young Frenchmen, and, in short, prepare the world for universal peace." Officers were expected to teach the arts of peace; they lectured on such subjects as the raising of bees and pigeons. General André, the minister of war, falling in with the pacifist point of view, introduced a bill to reduce military service from three to two years, a bill which was passed

[1] *Op. cit.*, page 81.

shortly after the fall of Combes and which, though placing France at an obvious disadvantage in case of German attack, was not repealed till 1913. Under the journalist minister, Camille Pelletan, the navy, like the army, fell into disorganization.

Fall of Combes

Combes wished to republicanize and democratize the army. The Dreyfus affair had shown the need of taking measures of this kind. Year after year two hundred thousand young men passed into the army and were subjected too often to anti-Republican influences. In "purifying" the army, however, General André resorted to methods which were quite as objectionable as the clerical intrigues denounced by the government. He made use of secret information sent in by Freemasons. Officers were spied upon even by their fellow-officers; if they went to church, if they carried prayer books, if they failed to show proper regard for the prefect, the minister of war heard about it. Some of the secret reports came into the hands of a Catholic deputy and, when published by him, damaged the cabinet irretrievably. Combes did not wait to be voted out. In January, 1905, when his majority was reduced to six, he delivered his resignation to the President. Not the general policies of the cabinet, but the methods of carrying them out had alienated his supporters. Maurice Rouvier who succeeded him was a milder man. He stopped the removal of army

officers; he appealed, in a rather cryptic fashion, to "an enlarged majority"; and he gained the support of a good many Progressists, although he admitted none of them to office. He succeeded in carrying to final passage the measures reducing the term of military service and separating Church and State; but, accused by some of being too mild, and by others of being too harsh in the enforcement of the Separation Law, he was compelled to resign in March, 1906, shortly after the election of Armand Fallières as the successor to President Loubet.

"Unification" of the Socialist Party, 1905

Meanwhile a momentous change had been taking place in French political life. Hitherto, the Socialist deputies, though increasing in numbers, had been held together by no regular party organization. They had professed divergent views; they had belonged to divergent factions. But, in 1905, after a Socialist congress at Amsterdam had condemned participation in bourgeois governments, these factions composed their differences, expressed common faith in the pure gospel of Karl Marx, and joined hands in the Unified Socialist party — the French section of the international Socialist party. The new party formulated strict rules to bind local federations in their choice of parliamentary candidates,[1]

[1] As to electoral tactics, the local federations were left free to recommend compromise candidates whenever Socialist candidates had been unsuccessful on the first ballot. (The conduct of elections is explained in Chapter VI.) Jaurès

and it not only forbade Socialist deputies taking office in the cabinet, but placed them under the control of the party's national council. Not all the Socialists in parliament entered the party. Those who believed in coöperating with other groups of the Left remained outside and took the name of Independent Socialists or (later) Socialist Republicans. Some of them were men of great eminence: Alexandre Millerand, Victor Augagneur, Aristide Briand, René Viviani. The cleavage between Unified Socialists and Independent Socialists was illustrated in October, 1905, when a banquet was tendered to Aristide Briand as a tribute for his services in shaping the Separation Law. Jaurès took no notice of an invitation to attend the banquet; Briand, in the course of his address, deprecated the attitude of aloofness, of criticism without responsibility, which the Unified Socialists had assumed.

Its effect upon other parties

The founding of this new party and its steady accretion of strength may have a wholesome effect upon parliamentary conditions. The Socialists, like the monarchists who have now disappeared as a serious political force, are irreconcilables. They wish to transform the government, not by the slow process of legislative reforms, not by coöperating with bourgeois governments as they did while Combes was in office, but by revolu-

favored this concession because it would help the Republicans of the Left against the Reactionaries; Guesde opposed it as a sacrifice of principle.

tion. The more formidable the Socialists grow, the more ready will the Republican groups be to combine in defense of existing institutions. The new menace on the Left will compel some approach to union, as did the old menace on the Right; indeed, since the Socialists are much better organized than the monarchists were, much more united, and much more hopeful for the future of their cause, an effective union may reasonably be expected. Perhaps something like a two-party system may emerge before long. "The bourgeois Republicans of all denominations," says Guérard,[1] "aspire to form a party of social conservation, whose sole enemies would be the Socialists, trade-unionists, and anti-militarists. The sooner this evolution is completed, the sooner definite lines are drawn, the better for French political life, which suffers from the prevailing confusion of party names, principles, and policies."

The menace of Syndicalism

The consolidation of Socialist factions was itself the outcome of a menace on the Left — Syndicalism.[2] The workmen, or rather the more turbulent spirits among them, had begun to show disquieting symptoms: symptoms of

[1] *French Civilization in the Nineteenth Century* (1914), page 173.

[2] See L. Levine, *The Labor Movement in France* (1912: revised ed., 1914); G. Weill, *Histoire du Mouvement Social en France de 1852–1910* (2d ed., 1912); A. L. Guérard, *op. cit.*; J. A. Estey, *Revolutionary Syndicalism* (1913).

impatience with parliamentary Socialism, which seemed to have become "harmless and respectable"; with the Socialist politicians, who were nothing but bourgeois after all; and with the somewhat distant prospect of establishing the Socialistic millennium only when the political machinery had been captured. They felt that the class struggle was economic, not political; and from the economic standpoint they were organized in syndicates or trade unions which, though formerly submissive to the will of Socialist politicians, were now controlled by the anarchistic General Federation of Labor (Confédération Générale du Travail). The Syndicalists still adhered to Socialist doctrines, but they wished to employ methods of their own. They believed in "direct action," in violence, in taking what they wanted by force.[1] Direct action might take the form of slow work, inferior work, destruction of property (sabotage), or, above all, the strike. By striking, the Syndicalists could not only obtain material advantages, but they could at the same time accentuate the class struggle and open the way to the final goal which was to be achieved by means of a general strike. The final goal? Apparently it involved the ownership of industries by the operatives and the substitution of an industrial state — a federation of labor

[1] Georges Sorel, in his *Illusions du Progrès* and *Réflexions sur la violence* (which may be had in translation), has lent a certain dignity to this Syndicalist philosophy of force.

unions — for the political state. This movement threatened seriously to deplete the Socialist ranks. In fact, the very existence of the State seemed to be imperiled in the years 1906–1910. Disorder prevailed on every hand. Syndicalism invaded the government services;[1] the postal employees struck; the railroad employees struck; the vine-growers of the south rose in rebellion. The state was saved by the sudden resurgence of French nationalism under the stimulus of German aggressions and by the firm leadership of Georges Clemenceau and Aristide Briand.

International relations: the Entente

For some time the importance of international relations had been obscured by a succession of domestic crises. Boulanger, "Panama," Dreyfus, and the anti-clerical legislation had intervened. The Lansdowne-Cambon convention of 1904 had settled controversies which might have drawn France and Great Britain into war, France recognizing British predominance in Egypt, and receiving in return a free hand in Morocco. This Entente Cordiale, which was necessitated by the growing power and ambition of Germany, gave France a new sense of security; the sky was clear; and the man in the street, so far as he speculated about the future, seemed to have found salvation in the cult of pacifism and international brotherhood. Germany, however — and even German Socialists, in spite of their pacifistic mouthings — lived in

[1] See Chapter IV.



GEORGES CLEMENCEAU

Bust by Rodin

a dream of world domination and wished to make that dream an actuality. The collapse of France's ally, Russia, in her war with Japan (1904–1905) gave Germany a chance safely to test the strength of the Entente Cordiale. On March 31, 1905, the Kaiser, landing at Tangier, declared that his visit was a recognition of the independence of Morocco This was an affront to France with her special interests in Morocco; but France, in view of the disorganization of army and navy and the prostration of her ally before Japan, could not risk the prospect of war, even with the assistance of Great Britain. She dropped her foreign minister, Delcassé, whose policy had tended towards the isolation of Germany, and agreed to submit the Moroccan question to an international conference. Unfortunately, this conference, which was held at Algeciras in 1906 and which conceded certain special privileges to France, did not bring the controversy to an end. Friction continued. It was not till 1911, when war was so imminent that the British ministry felt it advisable publicly to announce its support of France, that Germany acknowledged the paramount position of France in Morocco in return for a large strip of territory in the Congo. Next year Morocco became a French protectorate.

The Morocco crisis

The truculence of Germany had startled and angered the French people. It had suddenly awakened them to the danger of an unbearable foreign domination. "The Tangier affair was a

Revival of patriotism

flash of lightning. After which the clouds lifted," says Ernest Dimnet. "It was one of those events which rapidly destroy a whole system of thought or, at any rate, throw into the shade the protagonists who only a short time ago seemed alone to hold the field, meanwhile liberating another system until then unnoticed or disregarded. What has been called the regeneration of France dated from that shock." "In truth it is on the memory of those moments that France has lived ever since, and her fountain of new energy rose when she realized the significance of the Kaiser's demonstration in Morocco." [1]

Vigorous leadership of Clemenceau, 1906–1909

The country now felt the need of capable leadership. The Radical-Socialist Georges Clemenceau ("The Tiger"), whose rôle had hitherto been that of critic and destroyer, came into power, first as minister of the interior in the short-lived Sarrien cabinet which his forceful personality dominated, afterwards as premier (October, 1906, to July, 1909). He kept the chambers in proper submission to his leadership, employing at times an almost flippant tone in his explanations to the deputies. The basis of authority was moving from the deputies, who had been so capricious in making and unmaking cabinets, to the premier. Clemenceau did not wait for the whispered orders of the majority as Combes had done; the Delegation of the Lefts, so power-

[1] *Op. cit.*, pages 151 and 159.

ful from 1902 to 1905, had disappeared.[1] He did not attempt to reconstitute the Republican *bloc*, although the cabinet included Moderates, like Barthou and Pichon, and the Independent Socialists, Briand and Viviani. He shaped his own course and let the majority, with his own Radical following as a nucleus, register approval. His program stood firmly against any diminution of the military power of France; in view of the epidemic of labor disturbances it included a number of social reforms; and it favored conciliatory methods in the enforcement of the Separation Law. Outvoted on a minor issue, Clemenceau resigned after holding office for two years and nine months.

Briand premier, 1909–1911

Briand, who succeeded him, retained half the members of the outgoing cabinet and most of its policies. He dealt firmly with the lawless Syndicalists, got Parliament to enact a pending bill for old-age pensions, and sought to assuage the angry emotions which the domestic struggles of the past decade had aroused. As always happens in France, the government came through the elections of 1910 successfully.[2] The four parlia-

[1] In 1908 the Delegation of the Lefts was brought to life again. It included the Democratic Left, the Radical Left, the Radical-Socialists, and the Socialist Republicans. The Republican Union (Progressists) was not invited to join; the Unified Socialists refused to do so. The experiment failed.

[2] The new Chamber was composed as follows:
Independents, 21; Right, 20; A. L. P., 32; Republican

mentary groups which habitually voted with the government (Democratic Left, Radical Left, Radical and Radical-Socialist, Socialist-Republican) won 373 of the 597 seats. The ministerial declaration, submitted to Parliament after the elections, emphasized two fundamental aspects of Briand's policy: conciliation and leadership. In view of their victory, Briand said, "Republicans may face the future with full security; but precisely because they are conscious of their strength they must resist every temptation to misuse it. In no case, under no pretext, should it be transformed in their hands into an instrument of tyranny and oppression nor engender in the conduct of public business violations of personal liberty which all right-thinking men would condemn. Universal suffrage has expressed itself clearly. It intends that justice and liberty should be not the exclusive possession of some, but under every circumstance assured to all, equal to all. . . . Victory is won, but enthusiasm continues; the combatants have thoughts of rancor and reprisals; they dream of a victory more complete, of a more absolute extinction of the enemy; they may commit atrocities. It is the moment when the commander who respects his army and wishes victory to be without stain should throw himself between the combatants and cry

His policy of conciliation

Union (Progressists), 76; Democratic Left, 77; Radical Left, 113; Radicals and Radical-Socialists, 149; Socialist Republicans, 34; Unified Socialists, 75.

to the conquerors: 'Enough! Go no farther!'" And as to leadership, "the fundamental function of the government is to govern; it will not allow that function to be endangered. It means to employ the executive authority in all its manifestations, with all the responsibilities which it involves, without allowing it to be enfeebled by abusive interference."

His decisive action in the railroad strike

A few months later, Briand's determination to enforce the law was put to the test by railroad strikes which paralyzed the transportation system and were accompanied by rioting and sabotage. Briand proved himself a resolute man of action. He placed the railroads under military control and called the striking employees to the colors. Nor was he at all unnerved by the savage attacks of Socialist deputies. There is, he said, a right superior to all other rights, the right of a country to preserve its independence and power. "A country cannot allow its frontiers to remain exposed; that is impossible. And I am going to say something that will startle you: if the government had not found legal means for retaining control of its frontiers, of its railroads — that is to say, of the instrument necessary to national defense, — if recourse to illegal measures had been necessary, very well, the government would have gone that far." Socialists and Radical-Socialists regarded this as an apology for dictatorship; the Chamber broke into an uproar; and although the government was sustained by a

majority of 146 (all moderate deputies gathering about the cabinet), Briand resigned on November 2. Next day he returned to office with a reorganized cabinet, ready to remain as long as the four allied groups of the Left should stand behind him. On February 24 the government was interpellated on the leniency of the courts in dealing with the reconstitution of suppressed religious establishments and with the reopening of closed schools. Briand, reasonably enough, refused to take responsibility for the decisions of the courts. When he found himself deserted by two thirds of the Radical-Socialists and his majority reduced to 24, he decided that a new premier would better be able to carry out the policy of pacification and of even-handed justice.

Monis and Caillaux, 1911–1912

The new cabinet, headed by Senator Monis, was predominantly Radical-Socialist,[1] moderates like Poincaré and Ribot refusing to join it. Yet there was no such noticeable shifting of policy as might have been expected, and the four allied groups of the Left gave almost unanimous support. In less than four months the minister of finance, Joseph Caillaux, a prominent, unscrupulous politician, supplanted Monis as premier. There was no change of policy. Caillaux declared that the honor of France would be maintained by its alliances and friendships as well as by the increasing strength of army and

[1] Eight of the twelve ministers belonged to that party.

navy. His would be "a government which governs and pursues a policy of social evolution." He made no concessions to the Socialists, opposing motions which would have compelled the railroads to reinstate dismissed employees, proceeding vigorously against pacifist propaganda in the military barracks, and refusing to permit Socialist manifestations against the government. The high command of the army was reorganized. Caillaux himself did not inspire confidence, however. When it transpired that he had negotiated privately with the German government during the last stages of the Morocco crisis, the cabinet fell (January, 1912).

The cabinets of Poincaré, Briand, and Barthou, 1912–1913

For the next year Senator Raymond Poincaré, a Republican of moderate views, presided over the council of ministers. Briand served under him as minister of justice; Millerand, as minister of war. Conciliation, national defense, and electoral reform were the three cardinal points in his program. He carried through the Chamber a bill providing for proportional representation.[1] Elected President of the Republic in January, 1913, notwithstanding the vehement opposition of Socialists and Radical-Socialists who thought him too conservative and too sympathetic in his attitude towards the church,[2] he was succeeded by Briand. Briand resigned two months later when the Senate refused to accept the propor-

[1] Described in Chapter VI.

[2] See Chapter II.

tional representation bill.[1] Louis Barthou (Democratic Left), who stood very close to Poincaré and Briand politically—he was minister of justice in the outgoing cabinet — made no further attempt to coerce the Senate, although he himself favored electoral reform. He had inherited from his predecessor another bill, one which he felt to be of more immediate importance, a bill restoring the three-year period of military service. Hateful as it was to the Socialists and to most Radical-Socialists, the bill passed both chambers with the help of conservative groups. The Barthou cabinet did not survive long. The Radical-Socialists, who had obtained only three portfolios, had regarded it with suspicion from the first; it included Thierry, a leader of the Progressists, and other men of conservative mold; its chief was too militaristic, too harsh towards labor, too complaisant towards the church. Defeated by 25 votes on a proposal to exempt a new loan from taxation, Barthou resigned on December 1.

Military-service act

The Radical-Socialists, having been instrumental in his overthrow, now came to power under Gaston Doumergue. Seven of the twelve ministers were Radical-Socialists. In view of the approaching electoral campaign, the party had recently "unified" itself at the Congress of Pau, adopted a minimum program, and elected as its president the discredited Joseph Caillaux, who

The Doumergue cabinet, 1913–1914

[1] He still had a large majority in the Chamber. See Chapter III.

now became once more minister of finance and directing genius of the cabinet. The principles enunciated at Pau sat lightly on Doumergue. He seemed to prefer the principles of the preceding cabinet, explaining that the proximity of the elections made a restricted program necessary. The cabinet became involved in scandal. It transpired that in 1911, when Caillaux was minister of finance and Monis premier, the former asked and the latter obtained for him a postponement in the public prosecution of a notorious swindler. Both Caillaux and Monis (minister of marine) resigned. Nevertheless, in the elections of 1914 the Unified Radical and Radical-Socialist party more than held its own, winning 172 of the 602 seats. This must not be taken to mean that the party which had played such a prominent rôle since the beginning of the century still possessed real vitality and still enjoyed the confidence of the country. It was fast approaching bankruptcy. Its president stood convicted of rascality. At the very moment when it boasted of "unification" and of steadfast principles its candidates, anxious for election on any terms, flouted the Pau program. The party was pledged to repeal the three-year military law, yet Doumergue spoke strongly in favor of national defense and declared that he would loyally apply the law while the European situation remained what it was. Success in the elections was primarily due to the fact that the party, controlling

Radical-Socialist party in decline

the administrative machinery, had extensive influence and patronage at its disposal. There is no "swing of the pendulum" in France. The government always wins the elections — "makes" the elections, as the phrase goes.

Elections of 1914

When the new Chamber assembled in June, 1914, the deputies indicated their group affiliations as follows; Right, 16; Action Libérale Populaire, 23; Republican Federation (formerly Progressists), 36; Democratic Left, 34; Republicans of the Left, 54; Radical Left, 65; Independent Left, 23; Radical and Radical-Socialists, 172; Socialist-Republicans, 23; Unified Socialists, 102; "Not inscribed," 46;[1] Independents, 8. The two new groups (Republicans of the Left and Independent Left) dated from 1914. The Chamber was not quite so chaotic as the mere enumeration of groups would suggest, because most of the members of four groups (Democratic Left, Republicans of the Left, Radical Left, and Independent Left) were identified with either the Democratic-Republican party or the Federation of the Lefts, a new party whose formation by Briand, Millerand, and others definitely marked the end of the anti-clerical coalition, the Republican *bloc*.[2]

[1] That is, deputies who belong to no group, but who associate themselves for the purpose of securing representation on parliamentary committees. See Chapter VII. The deputies not inscribed generally vote with the Right.

[2] Regarding these parties see Chapter X.

René Viviani premier, 1914–1915

In the elections the candidates had been called upon to express their attitude on three main issues: the three-year military law, proportional representation, and the "controlled" income tax (the question being as to whether the government should have authority to investigate and check the tax returns). In the new Chamber there would be an affirmative majority on all three questions, but in each case the majority would be differently constituted. The Unified Socialists, the Socialist-Republicans, and the Radical-Socialists were arrayed against the three-year law; they formed part of the slender majority favoring the controlled income tax; and proportional representation could not be carried without the support of the Unified Socialists who, on that issue, parted company with the Radical-Socialists.[1] What sort of cabinet could hope to carry out the mandate of the country (if the election returns may be interpreted as showing such a mandate) in favor of all three measures? No mere coalitions of groups would suffice. Doumergue, not liking the prospects of navigation, scuttled his ship. No one seemed anxious to face the perils he had shirked. President Poincaré appealed successively to five politicians — representing the Democratic left, the Radical left, the Radical-Socialists, and the

[1] Five sixths of the Radical-Socialist deputies were opposed to proportional representation; the Socialist-Republicans were equally divided.

Socialist-Republicans — before Alexandre Ribot, a senator of rather conservative type, consented to form a cabinet. The Chamber turned him out at once. René Viviani, the Socialist-Republican, then took office with a cabinet which resembled that of Doumergue (seven of the former ministers reappearing), but reduced the representation of the Radical-Socialists and increased that of the Democratic Left.[1] Viviani had pledged himself to maintain the three-year service law, although his own party and the Radical-Socialist party were pledged to repeal it. In a vote of confidence the Chamber gave him a majority of 223.

Cabinets during the war

Not long after Viviani became premier, the Great War began. In the face of this crisis partisan conflicts disappeared; the parliamentary groups concluded a truce known as the *Union sacrée;* and on August 26 Viviani recognized the new situation by reorganizing his cabinet and bringing in the moderate Republican Ribot and the Unified Socialists Marcel Sembat and Jules Guesde. For the moment at least the Socialists abandoned their conflict with the bourgeoisie. In October, 1915, after the failure of its Balkan policy, the cabinet resigned. The new premier, Aristide Briand, adhering to the coalition plan, went farther than Viviani; he gave office not

[1] The cabinet included two Socialist-Republicans, four Radical-Socialists, two members of the Radical Left, and two of the Democratic Left.

only to three Unified Socialists, but also to a deputy of the Right, Cochin. In his endeavor to satisfy the claims of all the groups, however, he had built up an unwieldy cabinet — twenty-three ministers including the undersecretaries; and it became necessary, fourteen months later, to reduce the cabinet to half its former size and to entrust the direction of the war to a group of five ministers. Briand resigned in March, 1917, after the Chamber had criticized his economic policy and driven from office the war minister, General Lyautey. The two succeeding cabinets, which had to face military disappointments, sinister pro-German intrigues on the part of certain Radical-Socialists, and the hostility of the Unified Socialists, were short-lived. Ribot held office for six months, Painlevé for two. A strong hand was needed. On November 15, 1917, Georges Clemenceau, "The Tiger," now a man of advanced age but of indomitable spirit, became premier. He abandoned coalition. His cabinet included no Unified Socialists, no Socialist-Republicans, no conservative Republicans, no monarchists; it was more homogeneous than its predecessors, more closely identified with the Radical-Socialist party. Clemenceau subordinated everything to the vigorous prosecution of the war. He fought the foreign enemy; he fought the domestic enemy — the bolshevistic Socialists, the traitors in the ranks of the Radical-Socialist party; and the country accepted his leadership

with a splendid confidence. The post-war elections, while disastrous to the Radical-Socialist party, did not weaken the position of the prime minister. He retired, however, in January, 1920, and was succeeded by Alexandre Millerand.

Political situation after the war

Under normal circumstances a new Chamber would have been elected in the spring of 1918. It was considered advisable, however, to prolong the life of the existing Chamber until the conclusion of peace. The elections took place on November 16, 1919. In order to explain the character of the campaign and the results of the balloting three circumstances must be mentioned: In the first place France was still under the spell of the war. The nation, though saved from annihilation, had suffered terrible losses; the practical business of supplying necessities and at the same time making good the wastage of war would absorb the full energies of the French people. "Hier la France devait vaincre ou périr," said Alexandre Millerand. "Aujourd'hui il lui faut produire ou disparaître." Internal dissensions must be dropped; the nation must act as a unit in the work of reconstruction. It was not the time to play with social experiments or revolutionary doctrines. In the second place the Unified Socialists, who sympathized with the soviet rulers of Russia, were busily propagating such doctrines. In 1917 they had broken the party truce and begun to attack the government in the Chamber and in the country.

They demanded peace by negotiation, a plebiscite to determine the future of Alsace-Lorraine, friendly relations with the Russian bolsheviki, freedom to attend the International Socialist Congress at Stockholm. They had refused to enter the cabinets of Ribot and Painlevé. The extremists were in the saddle. So unpatriotic was the official conduct of the party that forty-one deputies, afterwards known as Dissident Socialists, seceded. It is not strange that sober-minded people had fears of a revolutionary outbreak, a revival of the Commune of 1871. The danger was great enough to bring antagonistic political elements together in temporary union. In a rather unpolished, but characteristic, phrase Clemenceau sounded the note of the election campaign in his Strasbourg speech: "To hell (*sus*) with the bolsheviki!" Finally a new system of election had been adopted, a modified form of the *scrutin de liste* or general ticket having replaced the *scrutin d'arrondissement;*[1] and the new system would undoubtedly work to the advantage of the Unified Socialists if separate lists of candidates were put forward by the numerous parties opposed to them.

Foundation of the National Republican *bloc*

In October therefore the Democratic-Republican party entered into negotiation with the other parties and succeeded in finding a basis of coöperation. "Each party, each candidate," said Adolphe Carnot, president of the Democratic-

[1] The new election law is described in Chapter VI.

Republican party, "will undoubtedly preserve his own ideal; but during the four years of the next legislature the grand work of national reconstruction will be achieved through a program common to all Republicans." On this understanding the A. L. P., the Republican Federation, the Socialist-Republicans, the Radical-Socialists, and a number of other organizations joined hands with the Democratic-Republican party and formed the National Republican *bloc*.

Its program

In a manifesto of October 24 the National Republican *bloc* pledged itself to "ensure the victory of the democratic Republic in social peace and progress; leave each signatory of this appeal entire independence as to the program he has formulated; but condemn and repudiate every alliance with reaction or with revolution; and recommend to Republican voters, in every district where it may be possible, union in defense of the following program." The program dealt mainly with questions on which all parties, even the Unified Socialists, would be likely to agree: the restoration of the devastated areas, economic reconstruction, agricultural development, etc. There were, however, two controversial clauses. One, directed against the Unified Socialists, declared "war upon bolshevism, upon all dictatorships, upon all forms of violence," while promising at the same time the development of social laws and of the powers of syndicates. The other, referring to the anti-clerical laws, insisted

upon "the absolute neutrality of the state and the school as the safeguard of absolute liberty of conscience." [1] The program itself is not of much consequence. The vital point is that the formation of the *bloc*, loose as its arrangements were, made it possible for the five parties to put forward a composite list in every district where the Socialists showed strength.

Attitude of the clerical party

It is perhaps significant that the officers of the Catholic party, the A. L. P., did not sign the manifesto of October 24. They had been taken to task for adhering to the *bloc* and had felt it necessary, in a communication to the clerical organ, *La Croix*, to emphasize the fact that the party had gone into the coalition "with all its past and all its beliefs." *La Croix*, like some of the prelates, looked askance at the *bloc*. During the campaign it opposed one list because some of the candidates were Protestants and another list because it bore the name of Alexandre Millerand. The archbishop of Paris, however, took a different view. "Better to cast your votes," he said, "for candidates who, with-

[1] During the campaign the question of church and state was naturally discussed by the leading politicians. See especially the speech of Alexandre Millerand, *Le Temps*, November 9, 1919. In the department of the Seine the *bloc* advocated constitutional amendments to secure the separation of powers, to incorporate the essential principles of the Declaration of Rights, and to erect a supreme court which should protect those principles from invasion by the government. It also advocated administrative reform.

out giving satisfaction to all our legitimate demands, would permit us nevertheless to expect a course of action useful to the country, than to support others whose program might be more perfect, but whose almost certain defeat would risk opening the door to the enemies of religion and the social order." Apparently the A. L. P. stood faithfully by its agreement; and a month after the elections one of its leaders spoke of "the imperious necessity of continuing the *Union sacrée*, which has assured victory, and of establishing internal peace, social peace, and religious peace."

Attitude of the Radical-Socialists

As to the Radical-Socialist party, its position was a difficult one. The conviction of one of its leaders, Malvy, by the High Court of Justice, and the pending trial of its former president, Joseph Caillaux, on the charge of treason had struck it damaging blows. Led now by Édouard Herriot, Senator and Mayor of Lyons, it had broken with the Unified Socialists, but it could not look with equanimity upon coöperation with its bitter enemies towards the Right. True, Herriot spoke of administering the religious laws in a generous spirit, but it is not clear that he carried the left wing of the party with him. In many districts the Radical-Socialists put forward independent lists.

Results of the election of 1919

In the new Chamber there are 626 deputies, 24 seats having been assigned to the three departments of Alsace-Lorraine. Shortly after the elections, a table prepared by the Minister of

the Interior gave the party or group affiliations loosely as follows:[1] Conservatives, 111; Progressists, 126; Republicans of the Left, 139; Radicals and Radical-Socialists, 138; Socialist-Republicans, 30; Unified Socialists (including four Dissidents—that is, Socialists who oppose violent measures), 72. In view of the peculiar circumstances of the time, the confusion of old party lines in the common struggle against the Unified Socialists, it was perhaps impossible to be more precise; even when Parliament met in December, the deputies showed some indecision as to whether they would reconstitute the old groups or fuse into larger units. It was not till the end of January that the official membership list of the groups was published:[2] Independents, 29; *Non-inscrits*, 21; Republican and Social Action, 46; Democratic-Republican Entente, 183; Democratic-Republican Left, 93; Republicans of the Left, 61; Radical-Socialists, 86; Socialist-Republicans, 26; Unified Socialists, 68.[3] The Independents and *Non-inscrits* apparently include some of the more conservative elements; the regular groups are now reduced from ten to seven. The aggregate loss in the elections fell mainly upon the Radical-Socialists, who lost 86

[1] The table does not include 10 deputies elected in the colonies.

[2] *Journal officiel*, Jan. 30, 1920.

[3] Four other members were elected, but, being opposed to revolutionary measures, refused to join the group.

seats, and upon the Unified Socialists, who lost 34 seats. The aggregate gain, while shared by the Democratic-Republican party (Democratic-Republican Left and Republicans of the Left), went mainly to the two parties that have opposed anti-clerical legislation, the Republican Federation (Progressists) and the Action Libérale Populaire. It is evident that the war has produced, for the time at least, a Catholic revival.

Alexandre Millerand, who succeeded Clemenceau as premier on January 20, 1920, broke away from traditional practice in distributing cabinet portfolios. He made no attempt to base the cabinet upon a coalition of groups. Only three of his colleagues could properly be styled professional politicians. Millerand appealed for support, not to the political coteries in Parliament, but to organized and articulate economic interests outside. Banking institutions were represented by Marsal, minister of finance, who was not even a member of Parliament; the federated chambers of commerce, by Isaac; the federated agricultural associations, by Ricard; and the new economic council, which includes not only artisans and public employees, but managers and engineers as well, by Coupat. "The Millerand ministry emphasizes the passing of parliamentarism and the rise to power of the economic unit in government." [1]

[1] E. D. in *The Nation* (New York), April 10, 1920, page 458.

CHAPTER X

PARTIES

Function of parties

POLITICAL parties, once proscribed and outlawed as fomenters of sedition and solemnly condemned by George Washington in his farewell address, are now accepted as a convenient, even a necessary, instrument of democratic control. Their function is something like that of attorneys in the courts of law: they marshal the arguments; the jury decides. By putting forward candidates, by drawing up platforms, by conducting campaigns, they make it possible for the electorate to act efficiently. They formulate questions which the electorate can answer with a "yes" or "no." [1]

French parties contrasted with English and American

But while parties exist wherever popular government exists, they are not always of the same type. They vary with political conditions. There is, for instance, marked difference in the functioning of English and American parties, while neither an Englishman nor an American can easily penetrate the mysteries of party arrangements in the countries of continental Europe. Any one who attempts to describe foreign party organizations should be wary and circumspect. It is easy to be

[1] On the function of parties see A. L. Lowell, *Public Opinion and Popular Government* (1913).

misled by superficial resemblances to familiar phenomena at home; it is easy to brush aside rebellious facts which will not square with a ready-made formula and to ignore vague half lights which may really be of great significance.

Some years ago the French historian, Charles Seignobos, sounded a warning against such misconceptions.[1] "The character of the French parties differs very materially from that of American and English parties," he wrote, "it deviates widely from the conception that the theorists of public rights have formed for themselves of a political party, according to the English and American models. Consequently, it is not astounding that the French parties are a puzzle to foreign observers, and appear to them like a monstrous vagary. . . . In the English countries every party is made up with a definite official programme, common to the whole party. In France there is no exact equivalent to the American platform; the word '*programme*' means ordinarily the 'profession' of the political belief of each individual candidate. Each one presents himself with his own personal declaration, and there is no general declaration in the name of the party. . . . Often two deputies who belong to the same party speak a very different language according to the sentiments or customs of their electors. Even the same deputy will change his

[1] "*The Political Parties of France*," *International Monthly*, August 1901, pages 139–165.

speech from one ballot to another, according to the allies of which he feels the need." And again: "In France the parties have no programme in a direct sense, no precise formula that defines their politics and their demands. They have sentiments, passions, if you prefer it so, and general tendencies which suffice to classify the politicians and those who elect them. Politics in France is purely an *affaire de sentiment:* the elector votes for the candidate whose political feelings approach most nearly to his own. . . . French politics are directed, not by parties, but by tendencies, and those who desire to understand them must give heed, not to the programmes of the candidates but to the sentiments of the electoral masses."

No effective party organization before 1901

Part of what Professor Seignobos says is a little cryptic. To describe French politics as "purely an *affaire de sentiment*" and in that way contrasting with Anglo-American politics serves only to make the mystery still more mysterious; such things as "sentiment" and "tendencies" may be observed in American politics; American voters have on occasion shown a sentimental tendency to stand by a party which has broken free from its principles and pledges. This much deserves emphasis, however: at the beginning of the century, when the article in question was written, there were no parties in the American sense, no political associations with a hierarchy of committees and conventions, with detailed platforms and disciplined ranks.

In 1901 the seven groups in the Chamber of Deputies could hardly be called parties. They were, with the exception of the monarchist Right and the revolutionary Socialists, unorganized factions of the Republican party which had disintegrated more and more after its chief mission of establishing the Republic had been accomplished. It is true that they had a certain continuity, each group persisting through successive parliaments, and principles of a sort, usually indefinite and formulated not by an official party convention, but by some prominent parliamentary leader, as Gambetta had formulated the Radical program at Belleville in 1869 and Millerand the Socialist program at Saint-Mandé in 1896. They were embryo parties, as yet unprovided with machinery for making nominations and fighting campaigns. In the election campaign each candidate announced his own program or "profession of faith"; whether he came forward as the supporter of some parliamentary group or as an independent, he framed his principles to suit his own taste or the predominant local interests. He might pose in the first election as a member of the Democratic Left, in the second election (necessary when no candidate received a majority on the first) as an "indefinite liberal," and, upon entering the Chamber, identify himself with the Progressist Union. He might, indeed, affiliate with several groups. In looking over the lists in the *Annuaire du Parlement* one finds that some-

times half, sometimes three quarters of the members of particular groups were at the same time identified with other groups. Under the circumstances it was impossible to determine, except in the roughest fashion, the relative strength of the different parties or tendencies. The membership lists of the parliamentary groups of that day must be used with caution since the deputies, elected on individual platforms of their own instead of party platforms, often found it advantageous to work simultaneously with two or more groups. Nor could the election returns safely be taken as a guide. The newspapers attempted then, as they do now, to show the popular strength of the party groups in the country by adding together the votes received by candidates professing to belong to particular groups. Such statistics were, however, misleading. "In the electoral districts, which are sufficiently numerous, where a single candidate presents himself," says Professor Seignobos,[1] "the number of votes attributed to this candidate alone gives a false idea of the proportion of parties; and in the still more numerous electoral districts, where there is only one Republican and one Conservative in competition, it is impossible to recognize the parts of the different Republican groups. The totals obtained by these additions are consequently valueless."

Since the opening of this century momentous political changes have taken place. France has

[1] *Op. cit.*, page 148.

Formation of political parties, 1901–1913

evolved a party system which resembles the party system prevailing in Great Britain or the United States, and which will, under the process of consolidation, now apparently setting in, come to resemble it still more. The fluctuating and chaotic system of parliamentary groups is passing away. There are still groups in the Chamber, more of them, in fact, than fifteen or twenty years ago: Right, Action Libérale Populaire, Republican Federation, Democratic Left, Republicans of the Left, Radical Left, Independent Left, Radical-Socialist, Socialist-Republican, and Unified Socialist.[1] But alongside of these groups or merged with them are elaborate party organizations national in scope, with membership dues, annual congresses, central and local committees, and nomination machinery. The transformation took place within a very short period. The singular, almost feverish activity which within little more than a decade brought eight parties into being, may be explained in some measure by the success of the Socialists; for the Socialists, while suffering from factional discords until the "unification" of 1905, had set the example of holding annual conventions and of formulating a set of principles to which all adherents must subscribe. In 1901 the Radical-Socialist party was founded and also the Democratic-Republican Alliance which ten years

[1] These were the groups in the 11th legislature (1914–1919). For the new groups in the 12th legislature, elected after the war, see *supra*, page 325.

later adopted a more definite program and became known as the Democratic-Republican party; in 1902 the Action Libérale Populaire (A. L. P.), descended from the Ralliés group of 1893; in 1905 the Unified Socialist party and the royalist Ligue de l'Action française; in 1906 the Republican Federation; in 1911 the Socialist Republican party; and in 1913 the Federation of the Lefts.

Relation of parties to the parliamentary groups

Naturally the new parties have close relationship with the parliamentary groups, the latter tending to become real party groups like the Republicans and Democrats in the American House of Representatives or the Laborites and Liberals in the English House of Commons. The A. L. P., Republican Federation, Radical-Socialists, Socialist-Republicans, and Unified Socialists, including considerably more than half of the personnel of the Chamber between 1914 and 1919, are real party groups bearing the party name. Such is not the case with the Right, although the Royalists have a form of party organization in the Ligue de l'Action française; or with the Democratic Left, Republicans of the Left, Radical Left, and Independent Left, although many of their members belong to the Democratic-Republican party; but we may safely assume that isolated groups, without party organizations of their own to support them in the country, will eventually succumb before the compact, disciplined forces arrayed against them. Electoral victories cannot be improvised. A waving plume

decides nothing in the mass movements of modern warfare. "The introduction of universal suffrage in the political order," says Charles Benoist,[1] "resembles closely the introduction of steam in the economic order; both equally have inaugurated the reign of the machine." The machine has come to its own in France much later than in Great Britain or the United States because the French have had a much shorter experience in the working of popular representative institutions.

Groups now recognized in rules of Chamber

Through the influence of party organizations the groups are now officially recognized in the procedure of the Chamber of Deputies. They choose the members of the nineteen standing committees,[2] each being represented on the committees in accordance with its numerical strength. In consultation with the president of the Chamber they fix the "order of the day," determining how time shall be apportioned among the measures awaiting consideration. Because of the new functions entrusted to the groups, deputies are no longer allowed to enroll in two or three of them at the same time. When a new Parliament convenes after the elections, each deputy announces himself as belonging to some one particular group or to no group at all (*non-inscrit*)[3] and

[1] *Revue des Deux Mondes*, April, 1904, page 542.

[2] See Chapter VII.

[3] The deputies not inscribed in any group (46 in 1914) are regarded as forming a group for the purpose of choosing committee members.

a membership list of the groups is printed in the *Journal officiel*, a list which provides the only safe basis of determining the result of the elections.[1] In the Senate, however, the groups remain as chaotic as they used to be in the Chamber; for example, Antonin Dubost, the president until 1920, appeared as a member of all three Republican groups.[2] It should be noted that the Senate, which responds slowly to political changes, does not, except in the case of the Right, use the group designations current in the Chamber. The Republican Left corresponds with the Republican Federation of the Chamber; the Republican Union with the Democratic Left; the Democratic Left with the Radical-Socialists.

French Party Organization

It is true as a general proposition that the parties towards the Left are more highly or-

[1] The returns printed in the newspapers before the meeting of Parliament are quite unreliable. Thus the London *Chronicle* (May 12, 1914) gives the Radical-Socialists 136 seats when they actually won 172; the Right 26 instead of 16; the A. L. P. 34 instead of 23; the Republican Federation 54 instead of 36; the Socialist-Republicans 31 instead of 23; and these errors reappear in the Statesman's Year-Book (1916, page 853). There is further confusion in the fact that the group names used in different newspapers do not always correspond.

[2] For the composition of the groups in both chambers and data regarding the careers of the politicians see Samuel et Bonet-Maury, *Les Parlementaires français* (1914), a volume which is somewhat similar to the American *Congressional Directory*.

French party organization

ganized and more efficiently disciplined than the parties towards the Right. The machine of the Unified Socialists is a model of efficiency. The Conservatives ("reactionaries" their enemies call them), who include the sixteen members of the Right and a good many of the forty-six deputies "not inscribed,"[1] can hardly be said to have a machine at all. The term "Conservative" is applied to Royalists and Imperialists alike; for these two monarchist factions, so long allied in a common and hopeless opposition to the Republic, have been blended together as far as parliamentary action is concerned. Outside of Parliament, however, they have separate party organizations of a primitive kind and separate propaganda.

The Royalists

The Royalists[2] maintain an office in the capital where members are enrolled; local committees in the eleven zones into which the pretender, the Duke of Orleans, has divided the country for political action; newspapers such as (in Paris) *Le Soleil*, *L'Action française*, and *La Gazette de France;* and an energetic political association, La Ligue de l'Action française. This league,

[1] The figures given here relate to the eleventh legislature (1914–1919), the composition of the groups in the new Chamber not being available at the time of writing. The election seems to have made little change in the strength of the monarchists.

[2] Charles Maurras, "*Les Idées royalistes*," *Revue hebdomadaire*, March, 1910, pages 34–58; Léon Jacques, *Les Partis politiques sous la 3e République* (1913), pages 171–191.

founded in 1905, does not believe in the negative, Fabian attitude which formerly characterized Royalist tactics. It strives to popularize the idea of an anti-democratic monarchy, of a king who will reign as well as govern. It seeks to show that Republican institutions, hostile to the army, operating through a "sterile and ruinous" party system, have brought about a general demoralization, a national decadence; and that unmistakable signs of resurgent nationalism, of a yearning for stable authority favor the reëstablishment of the traditional monarchy. This neo-royalism condemns political democracy and endorses violence quite in the manner of the Syndicalists. "The democratic ideal is false, not in its details or its accidents, but in principle and essence." [1] "The new government will necessarily rely upon the army. . . . The monarchy must be established by force; a vigorous and even violent solution would not be unpopular." [2] Under the monarchy there will be special privileges for the Catholic church; an hereditary aristocracy; assemblies representing "rights and interests," instead of individuals, and entrusted with a very limited function of control; administrative decentralization; and the withdrawal of the state from the field of labor regulation. With this absolutist ideal of the league the Duke of Orleans apparently sympathizes. In his introduction to

[1] Quoted by Jacques, *op. cit.*, page 177.
[2] Quoted by Jacques, *op. cit.*, page 186.

La Monarchie française, a volume of documents in which the declarations of the Count of Chambord are given the greatest prominence, he speaks the language, not of his own branch of the royal house, but of the Legitimists.[1]

The Imperialists

The Bonapartists or Imperialists [2] resemble the Royalists in little more than their desire to substitute monarchy for republic. They would preserve intact the institutions created in the Revolutionary and Napoleonic period; harmonize the principles of order and democracy; combine hereditary rule with popular designation (or acceptance) of the ruler, dynastic right with the right of universal suffrage exercised by means of the plebiscite. They deny, as the Royalists do, that they constitute a party. Napoleon, says Jules Delafosse,[3] "is not the pretender of a party, but the eventual head of a system of government which will take as collaborators, without distinction of origin, the worthiest and the most meritorious. . . . It would be unjust and even absurd to wish to convert this marvelous heritage of grandeur, of power, and beauty into the possession of a party. . . . The Napoleonic epic is a national treasure which all Frenchmen possess in common." The Imperialists have a committee in

[1] Jacques, *op. cit.*, page 173.

[2] Jules Delafosse, "*Le Bonapartism*," *Revue hebdomadaire*, February, 1910, pages 308–332; Jacques, *op. cit.*, pages 191–197.

[3] *Op. cit.*, pages 309, 322.

Paris which keeps in communication with the exiled Victor Napoleon; newspapers like *Le Petit Caporal* and *L'Appel au Peuple;* political groups which hold banquets and listen to speeches, says Delafosse, like vestals keeping alight the sacred fire. But the attitude is one of expectation, reserve, passivity. It is not through party propaganda that the Empire will be restored. The Republic — a collective tyranny, discredited by scandals and abuses — will destroy itself; political and social anarchy will inevitably open the way to the predestined man. "The Empire is not a party; it is a refuge. No one recognizes it in the days of prosperity. The deluge comes. It appears then as the rock of salvation on which all the miserable, threatened with submersion, throw themselves pell-mell, frightened and confounded."[1]

Royalists and Imperialists, like the Syndicalists, build their hopes upon the failure of the Republic to fulfill its early promise. It is perhaps true that France, weary of political intrigues, almost contemptuous of Parliament and politicians, would accept a resolute leader with equanimity. In his "France Herself Again" Ernest Dimnet contends that a *coup d'état* could easily be accomplished. He is even considerate enough to give a recipe: the appointment of the right men as minister of the interior and prefect of police; the arrest of a handful of deputies and senators (specifying Caillaux and Clemenceau) who might

[1] Delafosse, *op. cit.*, page 331.

cause trouble; a sudden blow in the night. The cardboard giant would topple over. The Parisians, reading of the dramatic episode in their newspapers, would regard it at first with acquiescence, then with enthusiasm; suppression of the newspapers would be a capital blunder — it would spoil breakfast. Dimnet, however, while explaining how the thing should be done, does not believe that it will be done. A necessary element is missing. The hour is propitious; but there is no man.

The Action Libérale Populaire

The A. L. P. whose members [1] sit next to the Right, is descended in direct line from the Ralliés of 1893.[2] The new name, assumed in 1899 when Waldeck-Rousseau had definitely taken an anti-clerical position in his famous Toulouse speech, indicated a mission to defend popular liberties (in this case the privileges of the Catholic Church) from invasion. Three years later the group transformed itself into a party. It is a Catholic party which accepts the Republic; Catholic first and by conviction, Republican by conversion and as a matter of expediency and tactics. Its objects have been defined thus:[3] "To defend and conquer

[1] Twenty-three in the eleventh legislature (1914–1919); more than seventy in the twelfth legislature.

[2] Jacques Piou "*L'A. L. P.*," *Revue hebdomadaire*, February, 1910, pages 476–492; Jacques, *op. cit.*, pages 320–344; E. Flournoy, *La Lutte par association; L'Action libérale populaire* (1907). Parker T. Moon of Columbia University will soon publish a volume dealing exhaustively with the A. L. P.

[3] Quoted by Jacques, *op. cit.*, page 321.

all liberties necessary to the life of the nation, particularly religious liberty which is of a superior order and which today is subjected to the most serious assaults. To defend public liberties constitutionally by all legal means and in particular by electoral propaganda, to support legislative reforms, to create or develop social activities and institutions, to improve the lot of the working class." The program is by no means connected with religion alone; its political and economic aspects are highly important;[1] but the interests of the church take first place in the preoccupations of the party and in determining its attitude towards other parties.

Its religious and political program

The A. L. P. is bitterly opposed to the legislation which has separated church and state, secularized the schools, and debarred the unauthorized religious orders from teaching. As to the status of the church no legal organization is possible without the previous approval of the Pope; and diplomatic relations with the Vatican should forthwith be reëstablished. As to education the state has no right to instruct Catholic children in

[1] In the campaign of 1914 the party advocated (*Journal des Débats*, February 22): maintenance of the three-year military service law; proportional representation; economy in expenditures; an income tax levied upon external signs of wealth and not by unjust and inquisitorial methods; restoration to the religious orders of the right to teach; distribution of public funds to private schools on the basis of attendance; instruction in duty towards God in public schools; revision of the constitution.

the doctrines of the Masonic lodges and to impart religious indifference and unbelief. There should be absolute educational freedom; Catholic schools, freed from state interference, should receive from the state a share of the public funds based upon the number of scholars (*répartition proportionnelle* which, with *représentation proportionnelle* in elections and *représentation professionnelle* in the field of commerce and industry, constitutes the three "R. P.'s" of the program). The chief political demand is amendment of the constitution which now permits "the omnipotence of an anonymous and irresponsible collective power." The Declaration of the Rights of Man ("modified in certain points") should be incorporated in the constitution and protected from legislative infringement, as in the United States, by a supreme court; the President should be chosen by a special electoral college and thus relieved of dependence upon Parliament; the chambers should be deprived of their power of deciding election contests; and a referendum should be required on all laws touching rights and liberties. The party advocates proportional representation, administrative decentralization, and a national civil-service law.

Its economic program

The economic demands of the platform are in some respects very advanced and bring the party closer to the Left than to the Right and Republican Federation with which it is usually associated. Laissez-faire is denounced as "the dream of chimerical theorists" and "the refuge of egoism."

"If State Socialism is a peril, the complete abstention of the state is a desertion; in face of the growing antagonism of capital and labor it [the party] should coöperate in the task of pacification." The platform endorses vocational training, workingmen's compensation, conciliation and arbitration, limitation of working hours, a minimum wage for home workers, and extension of the civil capacity of syndicates (unions). "Professional representation," however, must be regarded as its most original and striking feature.[1] "The syndicate, maintained on a professional [vocational] basis, is a means of social pacification and prepares the way for the stable organization of the world of labor. . . . The epoch of purely political parliaments has closed; national representation must become *political and economic*." Parliament and the other governmental organs of today will continue to represent the general interests of the country, but alongside of them will appear a council representing the special interests of vocational syndicates, syndicates organized in each commune and composed of both employers and employees. The government must consult the council on every proposed law, decree, or order which affects the interests of these vocational syndicates. The council itself will have an extensive ordinance power, subject to the referendum.

The A. L. P. admits to membership either

[1] See on this subject Jacques, *op. cit.*, pages 328–330.

Its organization

groups or individuals, the latter being termed *membres sociétaires* when they pay five hundred francs or at least twenty-five francs a year and *membres adhérents* when they pay at least one franc a year. The party organization includes: (1) Local committees in the communes, cantons, and departments; (2) a central committee, composed of the founders and coöpted members, which formulates the party rules and elects the party officers; and (3) a general assembly or convention meeting every two years. The general assembly includes the founders and delegates from the local groups, each group having one vote as a minimum and an additional vote for every one hundred members up to a maximum of twenty-five votes. The president of the party is invested with very extensive powers; in fact, says Dr. Jacques,[1] "the A. L. P. is almost the property of M. Piou, its president."

The Republican Federation

The Republican Federation is the rump of the former Moderate or Progressist party, reorganized and renamed in 1906.[2] For twenty years (1878–1898) the Moderates governed France under Gambetta, Ferry, Ribot, and Méline, sometimes allied with the Radicals, occasionally even displaced by them. Then came a period of hesitation and schism. Half the members of the group

[1] *Op. cit.*, page 445.

[2] J. Thierry, "*Le Parti républicain modéré*," *Revue hebdomadaire*, March, 1910, pages 478–487; Jacques, *op. cit.*, pages 199–222.

followed Waldeck-Rousseau in his evolution towards the Left. The other half, repelled by his anti-clerical policy and by the still more radical position of his successor Combes (1902–1905), found themselves acting in concert with the Right. From that time the Radicals and Socialists have classified them as reactionaries. The Republican Federation is, indeed, the most conservative of the Republican parties. Imbued with the principles of 1789, it is very tolerant in religious matters, strongly individualistic, and attached to the classical school of political economy (laissez-faire). Above all it stands for personal liberty; and for the sake of that principle it broke with the other Republican groups and opposed anti-clerical legislation. "It appeals to the moderation and wisdom of men," says Léon Jacques,[1] "to their calm, reasoned, and measured ideas, to their disinterested devotion to public affairs; and it proclaims that the progress of democracy depends in great measure upon moral progress. Only the imperious necessity of maintaining public order and social progress can justify restrictions upon the liberty, initiative, activity, and responsibility of individuals." The party has no love for reform; but it is ready to give way (without enthusiasm) before the necessities of evolution and the logic of events. Referring to proposed labor legislation, Jules Méline said in the party congress of 1912:[2] "Since it

[1] *Op. cit.*, page 203. [2] *Id.*

must be done and since it is better that it should be done with us than against us, let us strive at least to do it methodically, scientifically and progressively." The attitude toward reform was thus expressed by the congress of 1908: "Order by progress, progress with order. The weakness of the old conservative party lies in the attempt to conserve without reforming, the weakness of the revolutionary parties lies in their attempt to reform without conserving; our strength lies in the will and the power at once to conserve and develop." On the political side the party platform is very much like that of the A. L. P.: constitutional amendments to incorporate the Declaration of Rights and to erect a supreme court as its guardian; trial of election contests by an extra-parliamentary commission; proportional representation; administrative decentralization; a civil-service law; an income tax levied without inquisitorial methods; and in the matter of education entire liberty except that the state may enforce proper hygienic standards and see that teachers are properly qualified. In economic policies, however, the Federation parts company with the A. L. P. Stanchly individualistic, it would reduce state intervention to a minimum compatible with humanitarianism and social solidarity. It has favored old-age pensions and the protection of women in industry, for instance, but opposed the minimum wage and other limitations upon the freedom of contract. Stateism is

an "immense danger" which would suppress liberties, endanger the productive forces of the country, and culminate in a crisis of collectivism.

Its organization

The Federation admits to membership either groups which pay from five to fifty francs a year according to their numerical strength or individuals who pay from five francs (*adhérents*) to five hundred francs a year (founders). The party organization includes: (1) an annual congress consisting of individual members of the party and delegates from local groups;[1] (2) a general council of at least fifty members chosen by the congress, one fifth retiring each year; (3) a bureau of party officials chosen by the council every two years; and (4) an executive committee consisting of the bureau and twelve others chosen by the council.

The Democratic-Republican Party

The Democratic-Republican party — the party of Poincaré, Barthou, and Deschanel — was founded in 1901 with the idea of uniting isolated Republican groups against "triumphant anti-semitism and the menaces of the Nationalists."[2] It has oscillated between the moderates and the radicals, seeking to preserve the happy mean and combine as judiciously as possible the

[1] Each group is entitled to one delegate for every fifty members up to a maximum of ten.

[2] Paul Deschanel, "*L'Alliance républicaine*," *Revue hebdomadaire*, April, 1910, pages 34–52; Jacques, *op. cit.*, pages 350–361. It was at first known as the Democratic-Republican Alliance or (popularly) the Republican Alliance or the Democratic Alliance. It took the name of party in 1911.

principle of progress and reform with the principle of order and stability. It supported the Radical-Socialists in passing the anti-clerical laws, but afterwards, antagonized by the intolerant spirit of the Radical-Socialists and their growing confidence in State intervention, drew closer to the Republican Federation. The party wishes to establish "equal justice for all, liberty for all, social peace." It favors "neither reaction nor revolution." It is "anti-clerical but not anti-religious; anti-Nationalist [1] but vigilant guardian of the honor and strength of the country; respectful of all rights, but resolutely bent upon reform; adversary of communist utopias, distinctly hostile to violent methods, but constantly preoccupied with all forms of progress and, above all, social progress." To realize the Republican ideal there must be formed "a close and loyal union of all democratic forces against the reactionaries, the anti-patriots, and the collectivists. It wishes to base this necessary union upon a program excluding fantastic formulas and rash promises. Only ideas and programs serve to classify parties." [2]

Its program

The Democratic-Republican party sees the need of a government which will really govern, which will recover forgotten or abdicated rights, and insist upon respect for the law — a government, as Raymond Poincaré has said,[3] "firm in its

[1] That is, opposed to the jingoes.

[2] *Annuaire du Parlement*, 1909, page 244.

[3] Quoted by Jacques, *op. cit.*, page 352.

initiatives, courageous in its responsibilities, and disinclined to sacrifice the very dignity of its existence and the force of its authority in the effort to remain in office." Among the proposed reforms are: proportional representation, a civil-service law, an income tax designed to equalize burdens and not to equalize fortunes, and especially decentralization. The power of the prefect, says Paul Deschanel, in explaining the importance which the party attaches to decentralization,[1] is an anachronism and a peril — a peril because it accustoms Frenchmen to the idea of one-man power and prepares the way for a despot. In other countries citizens serve their apprenticeship in local government; in France local government is conducted by officials. "We shall have to choose between a system of government which consists in holding France at the end of a telegraph wire and a system of government which consists in making men and citizens." While denouncing clericalism — the exploitation of religion for political ends, — the party pledges itself to maintain religious liberty. "Religion," said Louis Barthou in the election campaign of 1914,[2] "has passed from the domain of the state into the domain of the individual conscience; and we think that the state would be guilty of an intolerable wrong if it made use of its power and its influence against religion." In the matter of

[1] *Op. cit.*, page 44.

[2] *Journal des Débats*, February 28.

education there should be state inspection of private schools and state diplomas to insure the capacity of teachers; all doctrines, all creeds, should be treated with equal respect. In other words the party favors state control, but will have nothing to do with the scheme of a state monopoly of education, now making headway among the Radical-Socialists as a punitive measure against the Catholics. The party favors social and economic reform. It proposes, for instance, the public operation of utilities, as in England and Germany; insurance against accident, sickness, and unemployment; the enlargement of the civil capacity of syndicates; the erection of permanent courts of arbitration and conciliation; measures which will encourage the workmen to become co-proprietors in industrial enterprises and thus transform salaried labor into "associated labor." But the basis of the existing social order must not be undermined by exaggerated reforms. "We consider it dangerous," said Louis Barthou,[1] "to discourage capital, without which no enterprise can live, and to wreck the vitality of labor in a sort of state officialism, depriving the workers of all initiative and transforming them into what may be termed administrative and irresponsible automata." With regard to foreign relations France, while desiring righteous and honorable peace, needs a strong army and navy to protect herself from attack.

[1] *Journal des Débats*, February 28, 1914.

Its organization

The party admits to membership individuals who pay from two francs (*adhérents*) to one hundred francs a year (founders) and groups which pay in proportion to their size and resources, but not less than thirty francs a year. The party organization includes: (1) A bureau of officers chosen by the central executive committee; (2) a central executive committee chosen by the superior council for three years; (3) a superior council which includes the members of Parliament, the members of the executive committee, one hundred notables in arts, letters, science, commerce, and industry, paying two hundred francs a year and named by the executive committee, and general delegates from the departments also named by the executive committee; and (4) an annual assembly which all members of the party are free to attend. The party has no separate group of its own in the Chamber; but more than one hundred deputies belonging to the groups seated between the Radical-Socialists and the Republican Federation were elected as candidates of the party in 1914.

The Federation of the Lefts

The Federation of the Lefts, because it gave expression to political readjustments which were to display themselves more clearly after the close of the Great War, deserves an important place in the recent history of French parties. It was founded at the close of 1913 after Aristide Briand, in a speech at St. Étienne, had urged Republicans to consolidate their ranks in resistance to dema-

gogy and revolution. It did not put forward any elaborate program in the electoral campaign of 1914. The principal points were national defense (the maintenance of the three-year military service law), proportional representation, and application of the anti-clerical laws in a generous spirit. The first two points in no way distinguished the Federation of the Lefts from the Right, the A. L. P., or the Republican Federation; all three were urged in the same campaign by the Democratic-Republican party. A foreign observer finds it hard to understand why Briand and Barthou, leaders of the Democratic-Republican party, should launch a new movement without distinctive policies and be active in promoting simultaneously the interests of two organizations. Why should there be both a Democratic-Republican party and a Federation of the Lefts, led by the same men, propounding very much the same doctrines? Apparently the answer is that the Democratic-Republican party, formed to resist the seditious agitation of jingoes and clericals at the beginning of the century and compromised by its support of the anti-clerical legislation of the next few years, could not easily become the vehicle of Briand's policy of "pacification" and "conciliation." Briand as premier in 1910 had declared that, victory won, the conflict with the church should be brought to an end, and that the moment had come "when the commander who respects his army and wishes

victory to be without stain . . . should cry to the conquerors 'Enough! Go no farther!'" He and his lieutenants felt the necessity of allaying the antagonisms evoked during the Combes period and of tempering the asperities of the anti-clerical laws. The new situation demanded a new party, a party which should announce definitely the collapse of the old Republican *bloc* and marshal the Republican forces to resist, not the old danger on the Right, but the exaggerated hostility of the Radical-Socialists and Unified Socialists towards the Catholic Church and towards the army. It was for this reason that the Radical-Socialists constantly referred to the Federation as "of the Lefts improperly so-called." The new party does not seem to have maintained any organization after the election campaign of 1914. But the purposes which had animated it did not die. When the war was over they served as the basis of agreement in the formation of the National Republican *bloc*.

The Radical-Socialist Party

The Radical-Socialist (or, more correctly, the Unified Radical and Radical-Socialist) party was until 1919 much the strongest party in the Chamber and, except for the Unified Socialists, much the best organized.[1] During the first decade of the century it dominated the government as

[1] A. Charpentier, *Le Parti radical et radical-socialiste à travers ses congrès* (1913); F. Buisson, "*La Politique radicale-socialiste*," *Revue hebdomadaire*, February, 1910, pages 159–181; Jacques, *op. cit.*, pages 223–266.

the Moderates had done in the preceding twenty years. Never having a clear majority, it maintained itself in power first by means of the anti-clerical Republican *bloc* with a managing committee known as the Delegation of the Lefts and afterwards, when the Unified Socialists seceded, by means of an alliance with the Democratic-Republican groups and the Independent Socialists. After the fall of the Clemenceau cabinet in 1909, however, and the formulation of Briand's policy of appeasement, Radical-Socialists and Democratic-Republicans separated. From that time until the outbreak of the war there was no settled majority in the Chamber; and this worked to the advantage of the Democratic-Republican party which — under Briand, Poincaré, and Barthou, — dictated the national policies for three-quarters of the period. Imposing as are the past achievements of the Radical-Socialists, their strength in the country has greatly declined. The party is rent by fatal discords which persist in spite of the formal "unification" of 1913. The right and left wings, tending respectively towards individualism and collectivism, stand so widely apart that complete separation seems not improbable. "Better the rivalry of two groups knowing what they want and saying it than the unstable equilibrium of a single group which unceasingly advances and retires, votes the principle and refuses the applications, affirms dogmas which it tramples under foot, and maintains the

Right and left wings of the party

appearance of an imposing unity at the price of an eternal equivocation." [1] Doumergue, while premier in 1914, did nothing to repeal the three-year service law, although bound by the minimum program of his party to do so. He declared that military service could not be reduced until the European situation changed. A Radical-Socialist candidate, denounced by other Radical-Socialists for endorsing the three-year law, replied: "I pray them to summon to their bar Messrs. Deloncle, Steeg, G. L. Bonnet, Doumergue, Léon Bourgeois, and many others whose opinion and attitude have been identical with my own." [2]

Official attitude towards Socialism

The party has sought a middle ground between the extreme wings: "We have repudiated the selfish individualism which, under pretext of liberty, submits liberty and justice to the dictation of the money power. Nor do we wish a rigid and tyrannical organization in which, under pretext of equality, we should take part in neutralizing initiative and restricting human effort." [3] The congress of 1908 adopted unanimously a declaration to the effect: (1) that social classes as defined by Marx do not exist; (2) that the theory of the class-struggle is an error and a practical danger as involving anarchy; (3) that private property should be maintained as a

[1] Charpentier, *op. cit.*, introduction by F. Buisson, page xi.
[2] Quoted by de Lanessan, *La Crise de la République*, page 27.
[3] Declaration of 1910 quoted by Jacques, *op. cit.*, page 229.

sacred thing; but (4) that "private property should give way whenever the interests of the owner are found to be in manifest conflict with the interests of society." Although the Radical-Socialists officially condemn collectivism, they maintain friendly relations with the collectivists. Without describing the various changes in those relations since the collectivists (Unified Socialists) abandoned the *bloc*, it may be noted that the two parties worked together in the elections of 1914 by supporting the same candidates on the second ballot. After the elections Émile Combes said:[1] "Ever since the dissolution of the *bloc* the Republic has marked time. The country has just indicated its will to move forward. It has reconstituted the *bloc*, seeing that in most districts on the second balloting, and in some on the first, Radical and Socialist votes have been blended." In the Socialist congress there was even a proposal openly to reconstruct the *bloc* as a union of Unified Socialists, Radical-Socialists, and Socialist-Republicans. Apparently the Radical-Socialists, having broken with the Democratic-Republicans, can make their future alliances only on the extreme Left.

The Radical-Socialist program

The Radical-Socialist party draws its strength mainly from the lower middle class — from the shopkeepers, the peasant proprietors, the government officials. It is, as Ferdinand Buisson has said, a bourgeois party with the soul of a popular

[1] De Lanessan, *op. cit.*, page 186.

party; that rare thing in the history of democracies, a class which seeks to confound itself with the nation. It has been described in the party conventions as "passionately attached to the cause of the people, to the well-being of the great disinherited masses." It is definitely evolutionist. "In politics sleep is death. More than ever we must show that we are a party which remains young, a party of combat and conquest." It is sharply anti-clerical, pledged to the supremacy of the civil power as expressed in the phrase "free churches in the sovereign state." This anti-clericalism, which has been the most pronounced characteristic of the party, is seen in its insistence upon secular education, upon education divorced from all religious creeds and confined to lay teachers. Many Radical-Socialists wish to make education a government monopoly as a means of circumventing the activities of the Catholic church. Several times (in 1903, 1905, 1910) this proposal has been endorsed by the party congress; but no further action has been taken; the weapon is still held in reserve. The party, setting great store by education, wishes to equalize opportunity by making all branches free and greatly to expand the facilities for vocational and technical training. Much attention is given to measures for improving the condition of labor: minimum wages; reduced working hours; co-operative societies; profit sharing; pensions; insurance against accident, sickness, and unem-

ployment. The program, which is more complete and practical than that of any other party, also proposes: a civil-service law; administrative decentralization; judicial reform (elective judges, improved procedure, reduced costs, etc.); a system of commercial and industrial credits; a progressive income tax with means of discovering hidden wealth; heavier and graduated inheritance taxes; compulsory processes of conciliation and arbitration; public operation of municipal utilities; new ports and transportation routes to develop commerce; expansion of public health activities, and much else. On the subject of electoral reform the party has hesitated, sometimes disguising its uncertainty in vague phrases, more often endorsing the general ticket; unlike the Socialist party it has always opposed proportional representation. With respect to international relations its program reflects to some extent the pacifistic tendencies which showed so plainly during the Combes period. The party has recommended a cordial understanding with all nations, recourse to arbitration, reduction of armaments; it has condemned the policy of adventure, which openly or secretly seeks new colonies, and the excesses and abuses of the military spirit. Just before the outbreak of the war it made the repeal of the three-year military service law the chief issue of the election campaign.

The Radical-Socialists have a very complete

organization, as may be gathered from the fact that the party rules (relating to such matters as membership, discipline, party machinery, propaganda, and finances) would occupy twenty-five or thirty pages of this book. Membership includes: (1) local groups which have been approved by the departmental federation and admitted by the national executive committee; (2) newspapers admitted by the executive committee; and (3) ex-officio deputies, senators, general councilors of the departments, and councilors of the arrondissement belonging to the party. All must pay annual dues: groups, eight francs; councilors and newspapers, thirteen francs; senators and deputies, two hundred francs; and these dues cover the three-franc subscription to the *Bulletin du Parti* which is one of the agencies of propaganda. The party members, besides being required to accept the minimum program and to affiliate with no other party, must always support Radical-Socialist candidates in all elections. This is a "rigorous duty." If a member fails in any of his obligations, the national executive committee may warn him, censure him, or expel him from the party; and publicity is given to censure or expulsion in the *Bulletin* and in the party newspapers. An expelled member may appeal to the annual congress against the committee's decision. The members of the party in each commune constitute the communal committee and send delegates to the committees higher up (in canton, arrondissement, and depart-

Radical-Socialist organization

ment);[1] and the departmental committee or federation sends delegates to the annual congress. This annual congress, which has power to regulate all the affairs of the party, is also attended by representatives of the party newspapers and by the senators, deputies, and councilors. It adjusts controversies, draws up a party program, and elects an executive committee of more than six hundred members, each departmental delegation nominating a number of committeemen proportional to the population of the department.[2] The executive committee meets once a month or oftener and through numerous subcommittees occupies itself with all the interests of the party: preparing the business which shall come before the next congress; admitting and disciplining members; passing upon the nomination of candidates for elective office; sending out campaign speakers and campaign arguments; distributing pamphlets at cost price; arranging local rallies; keeping in close touch with party groups all through the country and harmonizing their activities. The coöperation of the committee with lower units is shown in the making of nominations. Within each department the federation issues the call for every nominating convention and deter-

[1] Committees are also being organized in "regions" which include several departments.

[2] Each department is entitled to at least two members and to two additional members for every two hundred thousand of population.

mines its composition subject to the rule that all party groups within the constituency shall be represented. The nominee of a convention before entering the campaign as a Radical-Socialist candidate must receive the sanction of the departmental federation and official investiture at the hands of the executive committee. In view of the rather unmanageable size of the committee important functions are entrusted to its bureau which consists of the president of the party, sixteen vice presidents, and sixteen secretaries. The president holds office for a year and is not reëligible; the rest of the bureau hold office for two years, half retiring annually. The members of Parliament, who are ex-officio members of the executive committee and entitled to half the vice presidencies and secretaryships of the bureau, take a leading place in the direction of the party. Although the Radical-Socialists and Freemasons have been closely allied in the conflict with the Catholic church, there is no official connection between them.

The Socialist-Republican party

The Socialist-Republican party, which proclaims "the indissoluble union of Socialism and the Republic," was founded in 1911.[1] It is not a class party in the dogmatic sense. It believes that "reforms should be considered as steps in a more complete transformation and in the progressive establishment of a social order in which the workers will secure, with their share of prop-

[1] Jacques, *op. cit.*, pages 361–367.

erty and the whole fruits of their labor, complete emancipation." Its policy conforms to economic realities. In enterprises where the development of machinery and the concentration of capital have definitely reduced the workers to the position of wage earners collective ownership must be established; and by way of preparing for this change the party advocates the formation of syndicates and coöperative societies, the participation of workers in management and profits, and the substitution of state services for private monopolies. The party does not strive, as the Unified Socialists do, to assimilate the peasant proprietors, who cultivate their own land, to the proletariat; an association of independent producers will suffice to adapt them to the exigencies of modern economic life. The party favors fiscal reform, including a progressive income tax with means of checking the declarations of taxpayers; administrative reform, including participation by employees in the management of public services; an understanding among the workers of all countries; resolute defense of the anti-clerical laws; and pacificism (not excluding, however, resistance to foreign aggression). The party has right and left wings. There is a Briandist faction,[1] a faction that looks with approval on the new policy of appeasement; but its opponents, having control of the party congress in

Its program

[1] Briand, originally a Socialist, resumed membership in this party after the war.

1914, put forward a declaration almost identical with the minimum program of the Radical-Socialists: Return to two-year military service; progressive taxation of income and capital with means of checking the returns; and defense of secular education, with state monopoly of education as an ultimate resort. It has already been noted that the Socialist-Republican René Viviani, becoming premier after the elections of 1914, stood by the three-year service law, as his predecessor, the Radical-Socialist Doumergue, had done.

Its organization

Members of the Socialist-Republican party in return for an annual payment of twelve cents receive a party card.[1] The local groups in each department form a federation and send delegates once a year to the national congress.[2] There is an administrative committee composed of the Parliamentary group, nine members elected by the congress, and one delegate from each departmental federation. The body meets every three months. It appoints an executive committee of fifteen members and a bureau. Candidates must subscribe to the party platform and have their nominations confirmed by the appropriate federal committee; after election their conduct is under "the exclusive control" of the federation.

[1] Members of Parliament are subject to an assessment the amount of which is not specified in the rules of the party.

[2] In the congress each federation has one vote as a minimum and one additional vote for each one hundred members and for each seven thousand votes cast in the national elections.

The Unified Socialist Party

The Unified Socialist party,[1] founded in 1905, is, like the monarchists, irreconcilable, bent on overthrowing the Republican state. Even when it coöperates with those in power for the defense of proletarian rights and interests, declared the congress of 1905, it "remains always a party of fundamental and irreducible opposition to the whole bourgeois class and to the state which is the instrument of that class. . . . The Socialist group in Parliament should withhold from the government all the means which insure the domination of the bourgeoisie and its maintenance in power." And again: "The Socialist party is a class party whose object is to socialize the means of production and exchange — that is, to transform capitalistic society into a collectivist and communistic society — and whose method is the economic and political organization of the proletariat. By reason of its object, by reason of its ideal, by reason of the method which it employs, the Socialist party, while seeking the realization of immediate reforms demanded by the working class, is not a party of reform, but a party of class struggle and revolution." The Socialists believe that small industry and small commerce will disappear before the growing concentration of capital; that society tends to become divided into two classes, capitalists and wage earners,

[1] Marcel Sembat, "*Les Idées socialistes*," *Revue hebdomadaire*, March, 1910, pages 325–350; Jacques, *op. cit.*, pages 266–316.

bourgeois and proletarians; and that between the two classes there exists an antagonism, a class struggle, which will not end until the proletariat has triumphed and taken control of society. There are practical objections to this doctrine, and not the least serious is found in the fact that the peasant proprietors, at once owners and tillers of the soil, give no sign of disappearing and of being merged in the class of wage earners. The Socialists do not know how to face this disquieting enigma. Some would modify the application of their theory to suit exceptional cases when there is no divorce between capital and labor; others, striving to explain away the facts, insist that the party must propound the same theory of economic evolution in the cities and in the country. All unite in persuading the peasant proprietors that their situation is miserable and that eventually they must be the victims of capitalism. While the Unified Socialists are definite enough in their criticism of the existing capitalistic state, they have made no attempt to describe the character of the communistic state which will supplant it. Marcel Sembat has said [1] that new forms of organization will be devised by experiment; "we are as pretentious as science and as modest." According to him the new "joint-stock company of France" will be directed, not by a state bureaucracy, but by the producers themselves.

The Unified Socialists, besides advocating a

[1] In the article cited.

Its attitude towards reform

new society, are actively engaged in the amelioration of the existing one. At the outset the party committed itself "to the extension of the political liberties and rights of the workers, to the pursuit and realization of reforms" that would improve living conditions and better equip the proletariat for the class struggle. And the election manifesto of 1914 declared:[1] "We are trying to give the world of labor increased opportunities for carrying on the struggle, thus preparing it for the great work of social renovation which is incumbent upon it. We wish to secure, to seize, the maximum of political and social reforms obtainable under the present social system." The party must live politically; it must gain the sympathy and confidence of the proletariat; and therefore, while awaiting the revolution which will install collectivism, it cannot stand aloof from the reform movement. And yet in promoting reform there is an obvious danger, a danger of compromising the future, of consolidating the bourgeois state, of erecting a barrier to the establishment of collectivism. The farther reform is carried, the harder it will be to persuade the proletariat that its circumstances are intolerable; the more the existing social order is improved, the harder it will be to justify the substitution of a different social order. In the face of this dilemma many Socialists look coldly upon reform. The majority, however, accept the position of the late Jean Jaurès.

[1] W. E. Walling et al., *Socialism Today* (1916), page 64.

"Precisely because the Socialist party is essentially a party of revolution," he said in 1908, "it is the party most actively and genuinely bent upon reform." In 1914 the party demanded:[1] electoral reform (proportional representation) as a preliminary to constitutional revision; immediate return to the two-year service law and gradual substitution of a militia for the regular army; progressive taxation of income and capital with means of checking the returns; freedom for all, including government officials, to organize syndicates; a complete system of national insurance against old age, sickness, accident, and unemployment; development of education by all possible means. It expressed abhorrence of nationalism and militarism and advocated a Franco-German *rapprochement* "which will permit of a definite alliance between England, France, and Germany, a condition necessary to the peace of the world."

Its organization

Members of the Unified Socialist party must belong to their proper labor union and to their local coöperative society; they must also pay five cents a year for a membership card and one cent a month by way of dues to the central organization.[2] In each commune the members form a "section" which acts through a general assembly meeting monthly and an administrative com-

[1] Proposals made in the platform and in the election manifesto are combined here. See Walling, *op. cit.*, pages 58–60, 64.

[2] Payment is made by means of stamps which are put on the membership card.

mittee meeting fortnightly. In each department these sections form a federation with a delegate council and an executive committee. The federation must pledge itself to respect the principles and program of the party as well as decisions taken by national and international congresses. The affairs of the party are regulated by an annual congress composed of delegates from the federations. Representation is based upon paid membership.[1] The parliamentary group, which makes an annual report to the congress and transmits it to the federation a month before the congress meets, is represented only for consultative purposes, that is, for convenience in discussing questions relative to the report. In the interval between congresses the management of the party is in the hands of: (1) a national council composed of delegates from the federations,[2] delegates from the parliamentary group,[3] and the members of the permanent administrative committee; (2) a permanent administrative committee of twenty-three members elected annually by the congress; and (3) a small salaried bureau chosen

[1] A federation is entitled to at least one "mandate" with an additional mandate for every twenty-five members; and to two delegates for the first ten mandates and an additional delegate for every additional ten mandates. If one tenth of the delegates demand it, the congress must vote by mandates.

[2] Two delegates for the first thirty mandates in the congress with an additional delegate for each additional thirty.

[3] Equal in number to one twentieth of the federation delegates.

by the national council from among the members of the administrative committee.

Party discipline

The party rules give much attention to the maintenance of discipline. They entrust the national council with control over the parliamentary group, the party workers, and the party press. Although the press is free to discuss all matters of doctrine and method, it is subject to restraint in dealing with party action; "all socialist newspapers and reviews must conform to the decisions of national and international congresses as interpreted by the national council." The party owns several important publications, among them *Le Socialiste* (weekly), to which all sections and federations must subscribe, and *L'Humanité* (daily). Nominations, which are made by the combined sections in each constituency, require the approval of the appropriate federation. Candidates must sign a pledge to observe the principles and program of the party. Electoral tactics are fixed with some precision by the annual congress. Thus in 1914 the congress decided upon coöperation with the Radical-Socialists on the second ballot, that is, in cases where no candidate received the required majority on the first ballot. "Wherever it will be impossible to win a direct electoral victory, the departmental federations will declare themselves in favor of Republican candidates who give them the maximum guarantees . . . against the dangers of war and in favor of a Franco-German

understanding, of the secular idea, and of fiscal reform." The administrative committee was given jurisdiction in cases where federations should violate the rule. Members of Parliament, who are controlled individually by the federations and collectively by the national council, are subject to an assessment of two hundred and fifty francs a month, one hundred francs being paid to the national council and one hundred and fifty to the group which defrayed the election expenses. Those who fail to make payments for a period of three months are liable to expulsion from the party. Any Socialist who, after election to public office, voluntarily leaves the party or is expelled from it, is expected to resign his office.

Tendency toward Consolidation

There is an aspect of party government which many writers have described without explaining. In France, as in the countries of continental Europe generally, the parties or groups are quite numerous; in England and the offshoots of England (the United States, Canada, Australia, etc.) the two-party system normally prevails. Such a variation in practice challenges serious attention; for today it is the parties which impart vitality to government and which, by the character of their activities, determine how government shall be carried on.

In England the two-party system evolved very slowly and as a result of practical adjustments

rather than conscious purpose. The evolution was still incomplete in the middle of the eighteenth century when the Tories were tainted with disloyalty and the dominant Whigs were split into factions or groups somewhat in the manner of the French Republicans at the close of the nineteenth century. As the system took shape, with two major parties contending for the mastery, with government and opposition engaged in a continuous debate in their appeal for popular support, its virtues came to be understood, and a philosophy was devised to explain and justify it. No doubt the logician may find in it, as in other institutions which have had a natural growth, provoking anomalies; he may affect amusement at the strange phenomenon (to quote "Iolanthe")

The two-party system in England and America

> "That every boy and every gal
> Who's born into this world alive
> Is either a little Liberal
> Or else a little Conservative."

But there is always an answer to such criticism: practically speaking, the system works; it is intelligible to the masses who can decide between alternatives, but who are likely to become confused and helpless when half a dozen solutions, with fine shades and nice distinctions, are set before them. Two parties reflect the peculiar limitations of the human mind, which, as Henri Bergson maintains, reaches its final solutions through the conflict of extremes. They best

satisfy those combative instincts which are the underlying cause of party.

Possible explanation of the numerous parties in France

The question here, however, is not to determine whether Anglo-American practice is better than French practice, but why the difference between them exists. Is it only a matter of accident, the two-party system having been developed in England through local circumstances and transmitted to the colonies along with other political institutions? If that were the sole explanation, the system would not have persisted so long, outside of England and especially in the United States, without profound modifications. Is it a matter of racial temperament, of the hard-headed, practical sense which disposes the Anglo-Saxon to reach concrete results by way of compromise? The continental nations, with their numerous political groups, are not all lovers of abstraction and theory. Is it because certain issues which have inspired the formation of continental parties are lacking in the English-speaking world? Monarchy as a political issue disappeared in the United States with the Revolution; it disappeared in the British empire with the attenuation of royal power, with the rise of the responsible prime minister as Carolingian mayor of the palace conducting the government in the name of the *roi fainéant.* The Catholic religion as a political issue disappeared with the fall of the house of Stuart. Until recently labor manifested far less inclination than in France or Germany or Italy

to assert separate class interests and to organize outside the existing parties. Whatever weight may be given to these various arguments, they are obviously insufficient, even in combination, to explain the phenomenon adequately. President Lowell has suggested a very different explanation.[1] The two-party system, he contends, marks a later stage in political evolution than the continental group system, the system of numerous parties. The tradition of self-government runs far back in England and in the United States; long experience has taught the advantage of coöperation, of subordinating doctrinaire antagonisms and impracticable dreams to the accomplishment of immediate objects. On the other hand the continental nations, though long familiar with the ideal of self-government, have had relatively a very short acquaintance with its practice.

Is the two-party system disintegrating?

If it were true, as some maintain, that the two-party system is now disintegrating and that in the future American and English politics will approximate the chaos of continental politics, President Lowell's hypothesis would naturally be under suspicion. Disintegration is suggested by many familiar facts: by the decay of partisan fealty, by the remarkable increase of the independent vote, by the launching of new party organizations, by the startling progress of the Socialist, or labor, movement. It is not the two-party system, how-

[1] *Public Opinion and Popular Government* (1913), pages 81–99.

ever, that is disintegrating; it is the two major parties functioning under that system that are disintegrating. This is a time of transition when new issues are forcing their way to notice and when the parties which do not wish to face them must be swept aside by a new alignment based on realities instead of memories. The Labor party in England and the Labor party in Australia do not simply add a new element; they compel the old elements to make coalition against them; and furthermore, by precipitating a conflict on real issues, they restore all of the old fervor and devotion and discipline to the rank and file.

Is consolidation possible in France?

Turning to France, do we find any conclusive signs of a tendency towards party consolidation? Do the facts lend support to President Lowell's hypothesis? Certainly the emergence of strong party organizations, the locking of the parliamentary groups, and the recognition of those groups in legislative procedure show that a leavening process is at work. Equally significant of a transition to new things is the history of the Republican *bloc* which, nearly twenty years ago, brought together the Socialists, Radical-Socialists, and the groups identified more or less with the Democratic-Republican party and which, operating through the Delegation of the Lefts, introduced a cohesion and discipline hitherto unknown. True, the *bloc* did not long survive the secession of the Unified Socialists in 1905. It continued for a few years as a rather shaky alliance of

Democratic-Republicans, Radical-Socialists, and Independent Socialists; and it fell utterly to pieces when Briand, as a leader of the Democratic-Republican party, declared that the anti-clerical conflict was at an end and that the time had come to make a generous peace. But the collapse of the *bloc* does not by any means portend a return to chaos. It requires no prophetic eye to discern a tendency in the opposite direction. While the secession of the Unified Socialists wrecked the *bloc*, that party, with its steadily increasing strength [1] and its vigorous discipline, will be an important factor in bringing about a redistribution of political forces, as the labor party has been in England and Australia. In the first place those who fear "the danger on the Left" are already showing a disposition to work in harmony. Briand's rupture with the Radical-Socialists on the religious question makes it possible for his followers to join hands with the Republican Federation, if not with the A. L. P.[2]

[1] The Unified Socialists lost thirty seats in the election of 1919, but this was due to their unpatriotic attitude towards the war, the widespread fear of Bolshevism, the combination of the other parties in the National Republican *bloc*, and above all to the operation of a new election system; on the basis of voting strength the Socialists should have gained at least 30 seats. See Chapter IX.

[2] In the campaign of 1914 Jacques Piou, president of the A.L.P. said that on the religious question there was little to choose between the "soft manner" of the Briandists and the "harsh manner" of the Radical-Socialists.

This was evident in the campaign of 1914. For example, Charles Benoist, president of the Republican Federation, urged union in opposition to the "impious compact" between Radical-Socialists and Unified Socialists, "the latter openly and as master, the former secretly and as a suppliant seeking a wretched electoral profit in the ruin of the country. . . . You call yourselves Federation of the Lefts, Democratic-Republican Alliance, Republican Federation, and Liberal Action. That makes little difference. All of you who call yourselves Frenchmen, we beg of you no longer to think of anything but France." It would be easy to multiply illustrations of this sort. In the second place it is safe to assume that as the Unified Socialists, drawing nearer to the responsibilities of office, discard something of their doctrinaire and revolutionary attitude, they will absorb, or at least establish an hegemony over, the Socialist-Republicans and the Radical-Socialists.[1]

The Radical-Socialist party, having exhausted its anti-clerical rôle, has become divided and confused. It hesitates before the problems of the future. It sought to save itself from isolation by acting in concert with the Unified Socialists in the elections of 1914; and that electoral *bloc* seems to foreshadow a parliamentary *bloc*. After the elections Émile Combes said:[2] "I am more

[1] In such a case the right wing of both parties would pass over to the Briandists.

[2] De Lanessan, *La Crise de la République* (1914), pages 185–



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than ever attached to the *bloc*. First and foremost because I do not consider democratic progress possible without that battle formation. There are two majorities possible: one altogether on the Left, established without limitation on democratic progress; the other depending on a vague concentration which would involve the worst deceptions." [1] He advocated the revival of the *bloc* as an imperious necessity. "In that part of their program which is really practical the Unified Socialists are almost in accord with the Independent Socialists and the Radical-Socialists." Camille Pelletan spoke in a similar vein. The Unified Socialist congress of January, 1914, while rejecting a proposal to reconstitute the *bloc* (as "likely to impair the party's combative vigor"), was divided in its opinion. Gustave Hervé, editor of *La Guerre sociale* and fomenter of Syndicalist demonstrations during the Morocco crisis, insisted upon the necessity of uniting "all the forces of the Left." "If we make an alliance on the second ballot," he argued, "why should we not continue the alliance afterwards? I am a *blocard* up to this point: that, were an incident like that of Morocco to recur, I should like to have in the cabinet a Socialist minister who would give warning of the danger and bring it to the

186. This is one of the most illuminating books that has been written on contemporary French politics.

[1] He is here referring to the inclination of Léon Bourgeois and others of the right wing towards the Briandists.

attention of his bourgeois colleagues. . . . In substance you all reach the same conclusion as I. Only, before accepting the dish, you spit upon it." Evidently an understanding between the Unified Socialists and Radical-Socialists is at least within the range of possibility.

Opinion of party leaders

The time is ripe for party consolidation in France. On every hand evidence of its approach abounds.[1] Leaders of all parties speak of the futility and incoherence of Parliament, its incapacity for any prolonged enterprise of reform; and for the most part they agree — men like Combes and Poincaré who agree in little else — that Parliament suffers, as the late Jean Jaurès said, from "its ambiguous parties and fluctuating program, its confused and hesitating majorities." This view is entertained so generally that the consolidation of parties, when once the movement gets under way, should proceed at a rapid pace.

That movement has in fact already got under way. First, in the years preceding the war, Aristide Briand formulated his policy of conciliation, appealing on the one hand to the Action Libérale Populaire and the Republican Federation, on the other hand to the Socialist-Republican party and the Democratic-Republican party; and the Federation of the Lefts was organized to promote this new policy in the elections of 1914. Then came the war and with it the party truce, the *Union sacrée*. Gradually the Unified Socialists

[1] On this subject see especially de Lanessan, *op. cit.*

drew away from this coalition, resuming their traditional attitude of opposition. In the elections of 1919 they stood alone, faced by the formidable alliance of parties known as the National Republican *bloc*. It is not to be expected that all the parties which gave their adhesion to the *bloc* will find permanent coöperation possible. No settlement of the religious question can satisfy both the A. L. P. and the Radical-Socialists. But even on the assumption that the A. L. P. will eventually reassert its full independence and that the Radical-Socialist party, or at least its left wing, will make common cause with the Socialists, the other elements of the *bloc* are almost certain to coalesce — by a slow and interrupted process perhaps — in a great liberal Republican party. The Unified Socialists will constitute an effective opposition. Discredited as they were by the prevalent fear of bolshevism and hampered by an election system which played into the hands of the majority, they lost 30 seats in the last elections, 14 in Paris alone. But far from indicating a collapse, as some journalists have supposed, the showing which the party made under adverse circumstances puts its future as one of the major parties quite beyond any doubt.[1]

[1] The Unified Socialists cast more than one fifth of the aggregate popular vote in 1919. Under a real system of proportional representation they would have gained 30 or 40 seats instead of losing 30.

CHAPTER XI

ADMINISTRATIVE COURTS

Administrative law in France

IN England and those countries that have derived their institutions from England it may be said, with certain reservations, that the law does not discriminate between the private individual and the public officer. The latter, having committed a wrongful act in the service of the state, cannot, because of his official character, escape the jurisdiction of the courts of law. He is held personally responsible. But in France, as in continental countries generally, "every effort is made to cover the responsibility of the servant of the state behind the liability of the state itself, to protect him against, and to save him from, the painful consequence of faults committed in the service of the state." [1] As against private citizens he holds a privileged position. A separate body of law, called administrative law, determines his rights and liabilities as well as the rights and liabilities of citizens in their relations with him; and special courts, called administrative courts, have been established to enforce these rights and liabilities. Public law and private

[1] Hauriou quoted in Dicey, *Law of the Constitution* (8th ed., 1915), page 400.

law are two distinct branches of jurisprudence in France.

How it developed

The contrast between English and continental practice has been variously explained. Perhaps, as Professor Hauriou believes,[1] it rests upon the relatively high centralization of government in continental Europe and the consequent subordination of the abstract principles of justice to the requirements of public policy. Aside from this larger aspect, the development of administrative law in France came as the result of experience with a different system under the Old Régime.[2] In the eighteenth century serious conflicts arose between the royal administration and the law courts; and while the independence of the latter was menaced, the authority of the former was subjected to intolerable restraints. When the Revolution came in 1789, all parties looked askance at the pretensions of the courts: those who stood by the old order, because the old order had suffered encroachments; those who wished to establish a new order, because the new order must be protected from similar encroachments. Moreover, Montesquieu's doctrine of the separation of powers, as understood by Frenchmen, implied that the courts must under no pre-

[1] Hauriou, *Précis de droit administratif* (8th ed., 1914), page 2.

[2] Berthélemy, *Traité élémentaire de droit administratif* (7th ed., 1913), page 18; Chardon, *L'Administration de la France: les fonctionnaires* (1908), page 347.

text interfere with the liberty of administrative action. This principle was recognized in the laws and constitutions of the revolutionary period. A law of 1790, for instance, declares that judicial functions are distinct and must always remain distinct from administrative functions; and the Constitution of 1791 forbids the courts to take any action that trenches upon the administrative field.

Advantages of the French system

This system, which has continued down to the present time, makes the administration the arbitrary judge of its own conduct. Apparently it leaves private rights without protection. "The government has always a free hand," says President Lowell, "and can violate the law if it wants to do so without having anything to fear from the ordinary courts." [1] But as a matter of fact the system is arbitrary only from a theoretical standpoint. Such safeguards have been evolved during the past century — in the creation of administrative courts with a settled procedure and a coherent body of case law for their guidance — that the Frenchman is no more exposed to official oppression than is the Englishman or the American; in some respects his situation affords larger guarantees. On the other hand, the existence of a separate body of administrative law, slowly matured by the decision of cases and adjusted to the necessities of efficient service, has

[1] *Governments and Parties in Continental Europe* (1896), Vol. I, page 58.

much to recommend it.[1] It relieves officials from the vexatious and even absurd obstacles that American and English courts sometimes interpose; and, because the procedure is better adapted to its purpose, it permits a more real penetration of the law into administrative matters. That our system of common law entails irritating abuses must be patent to any intelligent observer. Whenever some small administrative irregularity is alleged, satisfaction may be sought only through courts which are expensive, technical, and dilatory. Thus a man by the name of Collins, being dismissed from his post as superintendent of highways in New York City and claiming that the dismissal violated civil-service regulations, began action for reinstatement in 1904. Apparently the question was very simple; it would have been settled by a French administrative court in a few hours. But such is the nature of American civil procedure that, though Collins always won, he could never get a final judgment. On some technicality or other the suit went to the appellate division of the Supreme Court twelve times and to the Court of Appeals three times. Finally, in July, 1916, the litigation was ended by an agreement between the parties!

From the standpoint of effective government there is a still more serious difficulty. Officials are often discouraged from performing their

[1] For criticism of administrative law see Dicey, *op. cit.*, page 396, and Lowell, *op. cit.*, Vol. I, page 58.

duties because they know that, though acting with the best intentions in the world, they may subject themselves to damage suits taken on some nice technical point. In this way provisions of the English Merchant Shipping Acts, which permit the Board of Trade to detain unseaworthy ships, have been rendered nugatory; the agent of the Board knows that he is personally liable for damages if a jury disagrees with his conclusions as to the condition of a ship.[1] In France the official is sheltered behind the liability of the state; and if, obeying in good faith the orders of his superior, he does injury to private individuals, they may seek redress against the state in the administrative courts, knowing that the claim will be decided promptly, that the costs will be negligible, and that the state can pay the damages awarded. Here are advantages which both the official and the citizen equally recognize.

Officials protected against vexatious interference

Administrative courts: (1) the Prefectoral Council

There are two administrative courts: the Prefectoral Council (*Conseil de Préfecture*) and the Council of State (*Conseil d'État*). In each department the Prefectoral Council, consisting of three or four members, acts as a court of first instance. Its jurisdiction includes a variety of matters that are not, strictly speaking, administrative (contested municipal and district elections, offenses against national highway regulations, etc.), but extends mainly to complaints against official acts, as when a citizen alleges that

[1] Dicey, *op. cit.*, page 392.

he has been taxed inequitably or that the prefect has authorized the erection of an insanitary factory. The procedure is exceedingly simple because, by means of an official investigation, the court ascertains the facts in the case before the hearing takes place. Nevertheless, it cannot be said that the Prefectoral Councils inspire any high degree of public confidence; and that there are substantial reasons for this lack of confidence appears from the fact that almost all important decisions are brought before the Council of State on appeal and that two of them out of every three are there modified or reversed.[1] Indeed the composition of the councils gives no sufficient guarantee of judicial capacity. The salaries, ranging from $400 to $800 outside Paris, do not as a rule attract able men. The members, being appointed and removed by presidential decree, have no security of tenure; the only check upon political patronage is found in the provision that the nominees must have had a legal training or an experience of ten years in some government office. The character of the council is partly explained by its history. It was originally, and still remains, an advisory body; in some matters the prefect must, in all matters he may, seek its advice, though his ultimate course need in no way be influenced thereby. Legally he is entitled to preside; that he does not exercise this right when the council acts as a court is simply

[1] Chardon, *op. cit.*, page 368.

a concession to the proprieties. Latterly proposals have been made to reform the councils or abolish them altogether.

(2) the Council of State

The Council of State occupies a very different position; no English or American court enjoys higher prestige. Like the Prefectoral Council, however, it plays a double rôle, having originally possessed only executive or advisory functions. In some measure the development of its jurisdiction as a court, the separation of its executive and judicial functions through the establishment of distinct committees, recalls the process by which the judicial committee of the privy council evolved as the highest court for the British Empire.[1] Fortunately, adequate precautions have been taken to free the Council acting as a court from political influences and to give it a position of independence over against the government. The Council does include political elements: the minister of justice, who, though nominally its president, makes only one formal appearance during his term of office; and twenty-one "councilors in special service" who, representing the various ministries, expound the official point of view, when the Council is asked for advice, and help to determine the nature of that advice as well. But these political members are excluded from the Council when it decides cases. Only the

[1] The judicial functions of the Council of State are regulated by the law of April 8, 1910, and by a number of decrees issued in the same year.

professional members, the thirty-five "councilors in ordinary service," act as judges. They are appointed by presidential decree, as the constitution requires; but half of them must have served for a considerable period in certain important positions connected with the Council, this preliminary service being open only to those who have demonstrated their fitness in competitive examinations. Such men bring to the Council of State a mature knowledge of the law and fine ideals of judicial conduct. The other half, though appointed without restriction of any kind, are men of proved capacity who have won reputation in the practice of law or in the higher ranges of government service. The personnel therefore includes two elements: one strictly professional and, by virtue of a long preliminary training, familiar with the procedure of the Council and with the jurisprudence which a mass of decisions has built up; the other drawn mainly from the active administration, acquainted with the practical aspects of questions which the Council has to decide, and less apt to be influenced by technical considerations. The mingling of these two elements has produced admirable results. The councilors, as Duguit says,[1] "do not inspire in the governmental mind the distrust or jealousy which judges of the ordinary courts might inspire; and, on the other hand, they confront the government without that timidity which is not infrequently displayed by

[1] *Political Science Quarterly*, Vol. XXIX (1914), page 393.

the ordinary judges." [1] Nor has the government sought to impair this spirit of independence. No councilor has been arbitrarily removed since 1879. It might be observed that the salary of $3200, which would be small indeed for such an august tribunal in England or the United States, is considered liberal in France; and a pension is granted upon retirement.

Advisory functions of the Council of State

The advisory functions of the Council, though less important in practice than in theory, occupy a good deal of its time. Upon a large number of questions (having to do with public works, civil and military pensions, the creation of commerce courts, etc.) the ministers must seek its advice before taking final action. This happens in something like thirty thousand cases each year.[2] Frequently too the statutes, which are enacted in general terms and applied by means of detailed ordinances, require the ministers to frame these ordinances in consultation with the Council. The latter discharges its duties conscientiously. But in any case, and even where an opinion has been supported by elaborate explanations, the ministers are free to act as they choose. It is only in technical matters that they show a disposition to accept guidance. Naturally enough this attitude grieves the Council, whose best efforts have been

[1] On this and other points consult René Brugère, *Le Conseil d'État* (1910).

[2] Chardon, *op. cit.*, page 391. Four-fifths of the cases have to do with civil and military pensions.

expended to no purpose; but, on the other hand, the cabinet, under a parliamentary system, can hardly share serious responsibilities with a non-political body. It has been suggested that the ministers, unless excused in each case by Parliament, should be compelled to act upon the Council's recommendations. An alternative solution would be to leave the Council completely free for the conduct of its judicial business.[1]

Its original jurisdiction

The Council of State as an administrative court, besides entertaining appeals from the Prefectoral Council, exercises original jurisdiction in three important classes of suits. In the first place it may annul administrative acts that are attacked as *ultra vires*, an act *ultra vires* being one which the official concerned was legally incompetent to perform, or which he performed without due observance of the settled procedure, or which involved the violation of some law. The complainant need not show that he has been injured by the act; it is sufficient that he has an interest, even an indirect moral interest, in its annulment. Thus an association of government officials may attack the appointment of an official if it seems to have been made in violation of the ministerial ordinance regulating such appointments. In the second place the court may annul any act which, while legal in itself, has been performed for a purpose not contemplated by the

[1] Brugère, *op. cit.*, page 165.

law.[1] Thus the court has held invalid a decree dissolving a municipal council because of irregularities in the election, for such a dissolution can legally take place only for the purpose of correcting abuses in the local administration; and when a prefect granted to a bus company the exclusive privilege of meeting trains at a railroad station, it was held that he had not acted, as he professed to have done, under the police power. In 1879 the court found that the closing of a match factory was not justifiable under the police power (sanitation). The factory had been closed by the prefect, acting on the order of his superior, not really because of insanitary conditions, but because the state wished to save the expense of compulsory purchase necessitated by its establishment of the match monopoly. Such decisions are based upon the doctrine of "misapplication of power"; they involve an examination into the motives that lie behind the act. But the complainant does not have to bring positive proof that the act was dictated by improper motives; he needs merely to show the absence of facts that would be necessary to justify the act. In the third place relief is granted to persons who are injured by the operation (even the normal operation) of the public services.[2] "It seems that today the Council of State recognizes the liability

[1] Duguit, *Les Transformations du droit public* (1913), pages 205–214.

[2] Duguit, *op. cit.*, pages 254–262.

of the administration even in cases where there has been no fault in the conduct of the public service." [1] It did so, for instance, where a policeman, pursuing an offender, collided with a pedestrian and injured him; and where a *gendarme*, firing at a mad bull, wounded a passer-by.

Decisions not always enforced

The Council of State has, however, no power to enforce its decisions. When damages have been awarded to an injured party or when the dismissal of a government employee has been declared *ultra vires*, the Council must rely upon the proper administrative authority to grant redress. Normally the decision will be accepted as a matter of course. But now and then officials show a disposition to resist the movement by which the Council of State is steadily extending its control over administrative acts. They boycott the Council of State, as Professor Hauriou expresses it. A case may be cited for illustration. Under the municipal code a mayor may suspend a *garde champêtre* for one month, but not remove him. The mayor of Cotignac sought to accomplish the latter object by ordering the suspension of a *garde champêtre* and renewing the order each month. When in 1909 the Council of State annulled the first ten orders, the mayor continued in his course. Next year seven orders were annulled. Under such circumstances, orders being issued and annulled indefinitely, the suspended officer could find only one means of relief.

[1] *Political Science Quarterly*, Vol. XXIX, page 402.

He could bring action in the ordinary courts; for since the mayor knowingly refused to conform to the decision of a competent court, he was guilty of a personal fault. Nevertheless a person of humble position would hesitate to avail himself of this opportunity, the procedure before the ordinary courts being regarded as too complicated and too costly.

Procedure: the judicial committees

Procedure before the Council of State is simple, expeditious, and inexpensive. The complaint may be filed at a cost of twelve cents.[1] One of the officials attached to the court prepares a statement of the case, including the pleas of both parties to the suit, adds his own observations, and passes the documents to a government commissioner for further scrutiny. Before the hearing takes place the councilors have acquainted themselves with all the details. They proceed rapidly to a decision, brushing aside technicalities which so often absorb the attention of lawyers and stand in the way of substantial justice. The Council of State has two judicial committees or *sections du contentieux*. One of these (composed of twelve councilors) deals only with cases relating to elections and direct taxes; the other (composed of nine councilors) has a much wider jurisdiction including such matters as highway offenses, damages occasioned by public works, pensions, dangerous or unhealthy establishments, etc. Both are divided into three subcommittees; but while in

[1] *Political Science Review*, Vol. IX, page 644.

the case of the first *section* the subcommittees are competent to render decisions, in the case of the second *section* their work is altogether preparatory. The most important questions (such as excess of power) are reserved for hearing by the Council of State in "public assembly" — that is, by the whole body of councilors of state in ordinary service; and at the request of the government, or one member of a committee, or the vice-president of the Council any case may be withdrawn from the committees and decided in public assembly. The activity and zeal of the Council of State, as well as its business-like methods, are universally recognized. But unfortunately, with its existing organization and with the prodigious increase of litigation which social and economic reforms have entailed, the Council is quite unable to clear its docket. The congestion of business steadily increases. In 1909 more than four thousand cases (representing then more than three years' work) had accumulated.[1] In 1916, notwithstanding changes in organization which had, six years before, increased the efficiency of the Council, the situation had grown worse.[2] Meanwhile, because Parliament has hesitated to spend a few thousand francs in enlarging the Council of State, litigants remain without relief, uncertainty prevails as to the meaning of new laws, and the government is rendered liable for interest when

[1] Brugère, *op. cit.*, page 120 *et seq.*

[2] *Revue du droit public*, Vol. XXXIII (1916), pages 65–67.

damages are finally awarded against it. This is another illustration of the evils which attend the lack of responsible and effective leadership in Parliament.

Now although a well-established principle of French law forbids the ordinary courts to interfere with the exercise of executive power, that principle is not without exceptions. First of all, criminal cases are tried in the ordinary courts. But this does not constitute a serious invasion of official privilege, because normally criminal proceedings must be set in motion by the state prosecutor and because under Article 114 of the penal code offenders cannot be prosecuted when they have acted in conformity with the orders of their superiors. If, nevertheless, an official is prosecuted and convicted, the government can exercise its right of pardon. In the second place, the ordinary courts will hold an official responsible for his personal faults — for negligent or malicious conduct in carrying out the orders of his superior. While the Council of State has jurisdiction where a "fault of service" has been committed — that is, where acts are illegal because of "excess of power" or "misapplication of power," the administrative entity, not its agent, then being defendant — the ordinary courts have jurisdiction where the agent has committed a "personal fault." It is important, therefore, to distinguish between a personal fault and a fault of service.[1]

Personal fault and fault of service

[1] See on this subject Duguit, *op. cit.*, page 271 *et seq.*

If the mayor of a commune authenticates a signature without observing the precautions laid down by the minister of the interior and if the signature proves to be fraudulent, he has committed a personal fault; but if he has observed the precautions and yet been mistaken, the fault is a fault of service. In this case the distinction is easily made. But frequently the facts are more complicated. In a doubtful case, when the ordinary courts assume jurisdiction, and proceed to try an official for personal fault, the jurisdiction may be contested by the prefect. Who shall decide between the prefect and the judges? Not the ordinary courts, because such authority would enable them to encroach upon administrative prerogatives; not the prefect himself, or even the Council of State, because the ordinary courts would then be at their mercy. For this purpose a special court called the Court of Conflicts has been established. It is formed in such a way as to insure impartiality. There are nine members: the minister of justice as president, three councilors of state chosen by their peers for three years, three members of the Court of Cassation (highest of the ordinary courts) chosen in the same way, and two members chosen by the other seven for three years. Reëlection being the rule, the personnel of the court is more or less permanent. The minister of justice rarely presides, his place being filled by a vice-president named by the judges from among their own

Court of Conflicts

number. It is the duty of the Court of Conflicts to designate the competent court in all cases of disputed jurisdiction.

Ordinances not "legally made"

There is still another way in which the ordinary courts may exercise control over the administration. According to the penal code "those violating ordinances legally made by the administrative authority shall be punished by a fine of one to five francs." The words "legally made" are significant; they imply that illegal ordinances may be violated without penalty. Therefore, when some one is brought into court and charged with the infringement of an ordinance, he can plead the fact of its illegality; and the court may find that no offense has been committed. But while the Council of State has power to annul an illegal ordinance altogether, the ordinary courts can only refuse to apply it in a particular case.

Such are the chief exceptions to a system which differentiates French public law sharply from our own. Administrative law is a subject that has serious interest for American students. The process of centralization is becoming more and more accelerated in the United States, as in England; and there are indications that, without any conscious imitation, we are being driven slowly toward the development of an administrative law. The Interstate Commerce Commission and the Federal Trade Commission illustrate this tendency. But far more significant is the marked change of attitude on the part of leading

students of government, a change that may be said to have had its beginning with the appearance of President Goodnow's *Comparative Administrative Law* in 1893. Today there are many who accept his conclusions as to the superiority of the continental system and who see in it a refuge from the intolerable abuses of our technical procedure.

CHAPTER XII

THE ORDINARY COURTS

Justice of the Peace

PRIVATE law, civil and criminal, is administered in courts that are styled "ordinary" to distinguish them from the "administrative" courts. In every canton (and there are more than twenty-nine hundred of these) a justice of the peace holds court. In civil cases his jurisdiction is very limited, and appeal is allowed whenever the amount involved exceeds sixty dollars. His criminal jurisdiction extends to petty offenses called *contraventions*. Now in the criminal code crimes fall into three main categories: *crimes*, which correspond roughly to our felonies (as murder, burglary and forgery); *délits*, or misdemeanors which are punished by an imprisonment of more than five days or a fine of more than three dollars; and *contraventions*, which are themselves subdivided into three classes. The decision of a justice of the peace is final only as regards the first class of *contraventions*, that is, when the fine does not exceed one dollar and when no sentence of imprisonment is imposed. Under this arrangement ten per cent of the decisions could be appealed; it speaks well for the reputation of the court that not more than one per cent of them actually are appealed. But the

justices are not expected merely to decide cases. They are expected to bring parties to an informal conference and to adjust disputes by methods of conciliation. In view of the complex social and economic facts of today, however, this process has become more difficult than it was a century ago; and everything depends upon the confidence and respect that the justices command. Unfortunately the salaries are exceedingly meager; unless the justice is finally appointed to one of the coveted posts at the capital, he can look forward to a maximum of only a thousand dollars. Since he is not ranked as a member of the regular magistracy, promotion to a higher court can come only in exceptional cases. There seems to be a very general feeling that the justice of the peace, whose ability and standing are all-important in view of his contact with the masses, should be better paid and have a higher official rank.[1]

District Court

In each arrondissement there is a District Court (*Tribunal d'Arrondissement*) [2] which entertains appeals from the justice's court and exercises original jurisdiction as well. In civil cases its decisions may be appealed when they involve personalty to the value of more than three hundred dollars or realty yielding an income of

[1] J. Coumoul, *Traité du pouvoir judiciaire* (2nd ed., 1911), page 347; Chardon, *L'Administration de la France* (1908), page 263.

[2] Sometimes called the Court of First Instance or, when acting in criminal matters, the Correctional Court.

more than twelve dollars. The presence of at least three judges is necessary; as a rule this number is exceeded. In fact the only French court in which a single judge presides is the justice's court; and authoritative opinion seems generally favorable to existing arrangements, which reduce to a minimum the danger of eccentric or venal decisions and which, measured by their results, have given good satisfaction.[1] Nevertheless, it has been urged that a reduction in the number of judges (there are fifteen in each chamber of the highest court) would make larger salaries possible, increase the feeling of responsibility on the part of individual judges, and perhaps lead to the establishment of more stringent tests for appointment to the bench.

Court of Appeal

Civil and criminal cases may be appealed from the District Court to the Court of Appeal. There are twenty-eight of such courts: one each in Corsica, Algeria, and Tunis; twenty-five presiding over areas which correspond roughly to the old provinces. The presence of five judges is necessary for a decision. Each court includes one or more civil chambers, a criminal chamber, and an "accusation" or indictment chamber. As will presently appear, it is the function of the accusation chamber to decide finally whether a person charged with committing a felony shall be prosecuted; and when a misdemeanor has been com-

[1] Coumoul, *op. cit.*, page 352; Chardon, *L'Administration de la France: les fonctionnaires*, page 276.

mitted, it may, at the request of the prosecutor or of the injured party, overrule the examining magistrate and order the accused to be brought to trial. Judges of the Court of Appeal are also assigned to service in the Court of Assizes which sits quarterly in the chief town of each department.

Court of Assizes

The Court of Assizes is the great criminal court, having jurisdiction over all felonies and over certain press offenses (such as libel). There are always three judges: a president, who conducts the proceedings and who is designated by the minister of justice on the recommendation of the prosecutor-general; and two assistant judges who may be drawn from the Court of Appeal or from the local District Court. The judges impose sentence, but a jury — the only jury employed in French courts — determines the question of guilt or innocence without any charge by the president and without any statement of the law except in the precise language of the criminal code. Certain excellent features of the French jury system will be discussed later on. In spite of them, however, the system does not appear to have achieved practical success. "Nobody entertains any illusions," says M. Chardon, "there are few institutions more discredited than the jury. . . . When we read in the best authors that the Court of Assizes is one of the most singular institutions devised by the imagination of man, we cannot find the criticism excessive." [1] Juries

[1] *Op. cit.*, page 213.

oscillate between extreme rigor and extreme indulgence. Their attitude is severe when offenses against property are concerned (forgery, arson), but lenient when an eloquent barrister has stirred their sympathies on behalf of the defendant or when life has been taken without premeditation and in the heat of passion. If a wife has killed her husband or a husband has killed his wife because of marital infidelity, acquittal seems to follow as a matter of course. It may be safer to commit murder than to commit mayhem; for while a case of murder is tried before a jury in the Court of Assizes, a case of aggravated assault and battery goes before three judges in the District Court. "On one occasion a husband who had an unfaithful wife gave her a tremendous thrashing and broke her arm, for which he was sentenced by a correctional court to a year's imprisonment. As he left the dock, he exclaimed ruefully, 'That's what one gets for being too gentle.'" [1] Under these circumstances the state frequently escapes the jurisdiction of the Court of Assizes by charging the prisoner with a misdemeanor instead of a felony.

It is interesting to notice that occasions arise when the Court of Assizes, though a criminal court, decides civil suits. Crime is an offense against society; in France, as in the United States, the government prosecutes. But crime also involves injury to individuals, who may seek

[1] *American Law Review*, Vol. XLVII (1913), page 467.

redress by means of a civil action for damages. This procedure has been greatly simplified in France. Instead of bringing a separate suit, the injured party may claim damages at the criminal trial and be represented there by counsel.[1] The success of his claim does not, however, depend upon the verdict of the jury; there are no juries in civil cases. Even in the face of a verdict of acquittal, the court has authority to award damages. Such circumstances have arisen from time to time. In the celebrated trial of Prince Pierre Bonaparte the court ordered him to pay damages for the murder of a prominent journalist whom, according to the jury, he had not murdered.

Court of Cassation

In order to preserve the harmony of French private law and to prevent the miscarriage of justice a supreme appellate court was established in 1790. This is the Court of Cassation. Its function is not to review the facts that have been established in the lower court, but to sustain or reverse (*casser*) the decision; and in the event of reversal, it cannot substitute an affirmative decision of its own; the case is then sent back for retrial.[2] Reversal takes place when the judges are found to have violated the law or failed to observe the essential forms of procedure. "This

[1] Garner, "*Criminal Procedure in France*," *Yale Law Review*, Vol. XXV (1916), page 283.

[2] For exceptional cases see Garner, "*Criminal Procedure in France*," *Yale Law Review*, Vol. XXV (1916), page 281.

court," says Raymond Poincaré, "has gradually introduced, in the body of judicial decisions, certain concordant views. Unity is not at once established upon each litigious question, but it tends toward a rapid evolution, and when the supreme court has pronounced upon any given point or cause, its opinion rapidly prevails in all the trials in which the same juridical problem occurs. Thus, side by side with the written law, a jurisprudence is created which fills lacunæ and dissipates obscurities." [1] Nevertheless, the decisions of the Court of Cassation are not legally binding upon the lower courts in subsequent cases. It has happened occasionally that its doctrine has been modified or transformed by the persistence of the lower courts in a different interpretation of the law. The court is divided into three sections, each with a president and fifteen judges: the criminal chamber, the chamber of requests, and the civil chamber. Criminal appeals go direct to the criminal chamber, but civil appeals are subjected to a more elaborate procedure, petitions not being entertained by the civil chamber unless the chamber of requests, after a careful examination, has come to the conclusion that there are substantial grounds for reversal. The Court of Cassation has no power to question the validity of acts of Parliament.[2]

[1] *How France is Governed* (1913), page 240.

[2] This aspect of judicial power is discussed in Chapter I, pages 21–26.

There are two other French courts that find no counterparts in the United States: the Council of Experts (*Conseil des Prudhommes*) and the Commerce Court. The former, originating in the time of Napoleon, has jurisdiction over disputes between employers and workmen. A council may be created by decree whenever the municipal council, the chamber of commerce, and certain other local bodies desire it. The members of the court, including an equal number of employers and workmen, are elected for six years by their peers, women being eligible. In the event of deadlock, which the constitution of the court renders not improbable, the law of 1907 provides for a rehearing under the presidency of the justice of the peace. Judgments may be appealed to the District Court when more than sixty dollars is involved.

The judges of the Commerce Court are also elective: merchants chosen by merchants and serving gratuitously for two years. They have jurisdiction over an enormous mass of commercial cases which may relate to the smallest or the largest transactions, to the purchase of a penny loaf of bread or to the bankruptcy of a great trading corporation. In fact commercial law is so complex and difficult to interpret that in almost half of France it is administered in the District Courts. The idea that a business man is best qualified to settle business disputes has definite limitations; it is not clear that a grocer

is well qualified to deal with the operations, let us say, of the General Transatlantic Company. Nor does the elective system work well. In Paris hardly more than four per cent of the qualified voters participate in the choice of the judges.

The bench as a career

In the United States judicial office sometimes crowns a successful career at the bar (this being the normal condition in England), but it is more often sought by ambitious young lawyers as a means of gaining recognition and laying the foundations of lucrative practice. In France, however, the bench offers a career by itself. The college student may decide to become a judge just as he may decide to become a doctor or a civil engineer. That stands as a general principle at least, although it is true that one-fourth of the vacancies occurring each year in the courts *may* be filled by barristers of ten years practice, professors of law, members of the Council of State, and certain officials.[1]

Appointment and tenure of judges

Judicial appointments are now regulated by a decree of 1908. Qualifying examinations, both written and oral, are held annually in Paris. Practical in nature, they seek to determine the candidate's knowledge of law and judicial procedure rather than his capacity to acquire that knowledge. Hence the candidate, besides having taken a law degree, must have either served in the office of a public prosecutor for one year or

[1] Decree of Feb. 13, 1908, Art. 16.

practised as an attorney for two years. Those passing the examinations may be assigned by the minister of justice to certain subordinate positions where they gain further insight into the conduct of judicial business and await appointment to vacancies in the District Court. Then step by step, seniority and merit both contributing, they pass from one grade to another through the hierarchy of courts. Political influence, exercised through the minister of justice, continues to play some part in determining promotions; senators and deputies still journey to the Place Vendôme in the interest of their friends. But the minister no longer has a free hand. His discretion is confined to the limits of a promotion list which is compiled by a judicial board and which cannot contain the names of more than a quarter of the judges of each grade; and moreover no judge can be promoted until he has served two years in a particular grade or, in the case of such promotion, be accorded a salary increase of more than six hundred dollars. The judges hold office during good behavior. They cannot be disciplined or removed by the executive; they are answerable for their conduct to the Court of Cassation alone.[1] The highest court and the lowest court are not, however, protected by these arrangements. The judges of the Court of Cassation are appointed and may be removed at the will of the government.

[1] In the matter of removals the court acts through a committee of seven judges. See law of July 12, 1918.

The justices of the peace, who technically do not form a part of the regular magistracy, are subject to special rules.[1] Appointed by presidential decree, they must possess the qualifications of a legal training and of a period of service as a court officer (such as clerk of court) or as a political officer (such as mayor or general councilor), the required period of service varying with the extent of legal training. For their removal or reduction in grade the formality of a decree is not required. But the danger of favoritism or political bias is minimized by the fact that the minister of justice must act on the advice of a board consisting of three judges of the Court of Cassation, the state prosecutor attached to that court, and certain high officials of the department of justice.

Small judicial salaries

Small as American judicial salaries are in comparison with the English,[2] they are large in comparison with the French. Judges of the Court of Cassation receive $3600 or less than a fourth of the salary paid to justices of the United States Supreme Court; judges of the Court of Appeals, $1400; judges of the District Court, $600 to $1200 according to grade; and justices of the peace, $500 to $1000, seventy-five per cent receiving the minimum amount. It is true that magistrates who are fortunate enough to be stationed

[1] See law of June 14, 1918.

[2] The judges of the highest court in Great Britain receive $30,000; there are many other judicial officers receiving $25,000.

in Paris receive an additional remuneration (amounting in the case of the Court of Appeals to $800); but the average remains singularly low.[1] There are two reasons for this: first, that any substantial increase would, owing to the large number of judges (49 in the Court of Cassation alone), involve a very considerable aggregate sum; and second, that a satisfactory personnel is secured under existing conditions. Men of scholarly tastes are attracted naturally to a profession which gives them a certain amount of leisure for study and which, though poorly paid, has the advantages of permanent tenure and a retirement pension. The dignity and social prestige of judicial office appeal to young men who, through inheritance or marriage, are possessed of independent means. The social amenities receive more attention in France than in America. When, for instance, the judges of assize arrive in a French town a prescribed etiquette must be rigorously observed. "They are bound to call first on the *Préfet*, on the commander of the garrison if he be a general of division, . . . and the visits in such cases must be paid in their scarlet robes. If, however, the garrison commander be a general of brigade, . . . the assize president and his assessors return to their hotel after calling on the *Préfet*, for they rank higher for the once than all

[1] It should be observed that the presidents of the courts, on whom the conduct of trials really devolves, are paid more than twice the maximum salaries mentioned.

other officials, and are entitled to receive first visits from them. The prefect, accompanied by his secretary and the councilors of the prefecture, all in full uniform, speedily arrives at the hotel to pay his return visit, and after him come, in whatever order they please, the general, . . . the mayor of the town, the president, assessor, and public prosecutor of the local tribunal, the central commissioner of police, and divers other functionaries. They make but a short stay, and as soon as they are gone the judges divest themselves of their robes, and set out to pay their return visits in evening dress." [1]

The case-law system

Of the fundamental points of contrast between French jurisprudence and Anglo-American jurisprudence the most striking perhaps lies in the different degree of authority given to decided cases.[2] Anglo-American jurisprudence rests upon the principle of *stare decisis* — adherence to decided cases. The English or American court is not so much concerned with doing justice to the parties in a case as with following the precedent set by the earlier decision of a similar case. Thus the unwritten law or case law, which the judges have made and which is scattered through innumerable reports and digests, is as binding as the written law. This system is supposed to possess great advantages: for one thing the advantage of certainty. The lawyer feels that he is not de-

[1] *American Law Review*, Vol. XLVII (1913), page 150.

[2] *American Law Review*, Vol. XLVII (1913), pages 790–795.

pendent upon the ambiguous phrasing of the law or the capricious attitude of the judge, because reported decisions fix the law's meaning and limit the judge's discretion. And again, the system is elastic. Upon the original law is grafted an interpretation; and while the original interpretation stands as a guide, the judges do as a rule slowly shift their ground so as to reflect changes in social and economic matters. Judges legislate; case law is judge-made law. As Professor Dicey remarks, English and American jurists are opposed to the adoption of legal codes because this might limit "the essentially legislative authority" of judges.[1] Mr. Justice Holmes of the United States Supreme Court said in one of his opinions that "judges do and must legislate"; but he added that "they can do so only interstitially; they are confined from molar to molecular motions." [2]

No case law in France

Now, the civil and criminal law of France has been codified since the time of Napoleon; [3] and the codes expressly declare that judges shall build up no case law. According to article 1351 of the civil code, "the authority of a decision applies only to the case which the court is called upon to decide." If the judge has been mistaken in a first interpretation, says one of the commenta-

[1] *Law of the Constitution*, 8th ed., page 369.

[2] See Thomas Reed Powell, "*The Logic and Rhetoric of Constitutional Law*," *Journal of Philosophy, Psychology and Scientific Methods*, Vol. XV, page 653.

[3] Brissaud, *History of French Private Law* (1912).

tors, that is no reason why he should feel compelled to follow the same line in later cases. "Justice will suffer less from two contradictory decisions than from a series of bad decisions which harmonize with each other. . . . The judicial authority must not give decisions on matters which have not occurred in the past and must not make any disposition for the future; and so we see the difference of this situation from that of the legislator who gives a guide for the future without any reference to the past."[1] When, therefore, a barrister cites cases in support of his argument, he does not presume that these should be binding upon the court; perhaps he may attempt to show that the highest court, though having always in view the satisfaction of justice in particular cases, has incidentally built up a doctrine on some point of law and that the doctrine is in itself logical and just. The court is asked to follow precedent, not because it is precedent, but because it is just. There is, however, one branch of French law which has not been codified and which is not subject to these rules. Administrative law, as evolved in the last century, is based upon reported decisions, these decisions themselves being profoundly influenced by textbook writers. But in the future, no doubt, when the case law of the Council of State has reached greater maturity, the legislature will formulate it in a written code.

[1] *American Law Review*, Vol. XLVII (1913), page 793.

Merits of French system

The French system has found scant favor among American jurists, largely because they are so little acquainted with its practical operation. Careful observers have concluded that French courts are freer from technicalities than ours, that they are trusted more than ours to do substantial justice, and that the law, as they apply it, is less likely to be tortured out of its obvious meaning. In one sense French judges possess a wider discretion than ours, for they are controlled by no precedents; in another sense they are more circumscribed, for the law can be modified only in express terms by the legislature itself and not through the subtlety of scholastic reasoning. In the development of judge-made law there comes a time, especially in a country so large and populous as the United States, when the very virtues of the system are a reproach. Such is the mass of decisions, often confused and conflicting, that the ablest lawyers cannot discover with any certainty what the law is. As for the layman he has learned that the simplest English words can have a strange and distorted significance. Justice threatens to break down under the burden of precedent.

"Inquisitorial justice"

In the field of criminal law French procedure, like that of the continental European countries generally, differs widely from English and American procedure.[1] The former, which is sometimes

[1] See on this topic "*The Docket*" articles in the *American Law Review*, Vol. XLVII (1913), pages 143–151, 300–312,

termed "inquisitorial," lays emphasis upon the rights of society and looks to the prompt repression of crime; the latter, which is sometimes termed "accusatorial," lays emphasis upon the rights of the accused and seeks to safeguard him from possible injustice. Both systems have their excellent features; both are liable to exaggeration and abuse. On the whole, perhaps, criminal law is more effectively applied in French courts than in American.

Preparation of a criminal case

The first step in a criminal case is taken by the state prosecutor who, when a charge is laid before him, collects what evidence he can and reports to the examining magistrate. There is no grand jury, no indictment. The magistrate determines himself whether a *prima facie* case has been made out. If it has, he subjects the accused and the witnesses to a relentless private examination, this differing from our informal "third degree," however, in the fact that it is a regular legal proceeding and that the accused may bring his counsel with him. The record thus compiled includes not only all the facts, and even rumors, which tend to incriminate the suspected man, but also a survey of his past life, which does not overlook suspicious and discreditable incidents. If the crime is a misdemeanor (*délit*), trial begins in the District Court. If it is a felony (*crime*), the record is sent to a body of five to fifteen judges

458–469; Chardon, *op. cit.*, pages 158–230; and Garner, *Yale Law Review*, Vol. XXV (1916), pages 255–284.

known as the "accusation chamber." These judges decide whether a "true bill" has been found, or they may first require the examining magistrate to make further investigation. Severe as the inquisitorial process may seem, the purpose is to discover the truth, not to establish guilt, and it is said that innocent men are rarely sent before the Court of Assizes for trial. French law does not adopt the rather hypocritical formula of Anglo-American law which presumes the accused to be innocent until he has actually been convicted. As an American lawyer has said, it does not "indulge in any such grotesque flight of fancy. . . . It merely says: 'You have, after a most thorough and patient examination of yourself and of everybody that knows anything about the case, by an officer of the state charged with the prosecution, by a judge charged with the investigation and by a jury of judges who have considered and passed upon the evidence — you have been declared to be, so far as can be ascertained, guilty of the charge brought against you. But we give you one more chance; if you can explain your conduct to the satisfaction of twelve of your fellow citizens, they may free you if they want to.'" [1]

Criminal-court procedure

An American lawyer, watching the progress of a trial before the Court of Assizes, would experience a succession of shocks. First of all, the written and authenticated statements of law officers (as to their investigation of the crime)

[1] *American Law Review*, Vol. XLVII (1913), page 148.

are accepted in evidence; far from needing substantiation, they are in many cases regarded as superior evidence which cannot be contradicted by witnesses. So that the jury may not know which side has called them, the witnesses appear in an order fixed by the prosecutor. They tell their stories to the jury without interruption or prompting of any kind and in their own way. They may describe what they saw, or what some one else told them he saw, or what conclusions they have reached as to the guilt of the prisoner. Neither prosecution nor defense can object to testimony as irrelevant or inadmissible. In that matter the president of the court has absolute discretion. He may, says the criminal code, "avail himself of anything which he thinks will contribute to the discovery of the truth," the law relying upon his honor and his conscience alone. Obviously this disregard of technicalities removes what is in America one of the most frequent grounds of successful appeal. After the witness has concluded his testimony, there is no cross-examination: only the president may question him, though counsel and jury may ask that certain questions be put. A curious means is taken to test conflicting evidence. When two witnesses contradict each other, they are placed on the stand together and, without any interference from the court, allowed to argue the point for the benefit of the jury. This is called "confrontation of witnesses."

Active rôle of the court

The president of the court, as these facts show, plays a very important (and, to Americans, anomalous) rôle.[1] He questions the witnesses; he determines the relevancy of evidence. In fact, having obtained before the trial an intimate acquaintance with all the details of the case, he conducts the proceedings from beginning to end. Although there are three judges in the Court of Assizes, two of them sit in silence and immobility while the president is incessantly active. Immediately after the opening address of the prosecutor comes the "judicial interrogation" of the accused; for the latter cannot, as in American practice, excuse his silence under a rule that failure to testify shall not be counted against him. The president conducts the interrogation very thoroughly and does not hesitate to use methods that to us seem unbecoming in a judge. Indeed the prosecutor is so well satisfied that he contents himself with making an address at the beginning and at the end of the trial. The following excerpt from the proceedings of a murder trial will serve as an illustration.[2]

The President. Your name is Bertha Blanc Vilette; you were born at Vichy forty-two years ago. Your parents were honest people; you were sent to school by them; later you entered the con-

[1] There are occasions, as in the first trial of Émile Zola, when the presiding judge displays an improper anxiety to hamper the defense.

[2] *American Law Review*, Vol. XLVII (1915), page 304.

vent of Ste. Marie at Lyons where you remained for four years. You did not always conduct yourself well there; there were constant complaints about your conduct, and in the end your parents were asked to take you home, which they did.

Madame V. Oh! no, sir, I left because I was taken ill with a fever, and I was always good —

The President. Have a care, prisoner; two of the sisters say differently. I shall go on. At nineteen they apprenticed you to learn a trade. You went to a dressmaker's at Lyons. One day some velvet and silks were missing, and you were charged with stealing them.

Madame V. Oh! no, sir, I did not go back to Lyons.

The President. Wherever it was, you were charged with a theft.

Madame V. No, sir.

The President. But I have the charge here in writing made by Madame S., your employer. If I show you this, will you still persist in the denial?

Madame V. If you had said that at first, sir, I would have said that I was innocent — the magistrate said so, and I was discharged.

The President. My good woman, you know what you are charged with. I represent justice and am here only to get the truth. A few years later you came to Paris, etc.

In continental countries this system is considered better than ours. The witnesses are not badgered; the substantial facts are not obscured





COURT OF ASSIZES (STEINHEIL TRIAL)

by technicalities; the trial proceeds with great expedition. The president, of course, must be a man of ability and sound common sense.

Grounds of appeal

In American courts, where technicalities command more reverence than they should, it is difficult to secure a conviction. Indictments have been set aside because of faulty spelling or faulty punctuation; a new trial has been granted because the jury reached its verdict on Sunday or because the prisoner left the court room for a moment to get a drink of water. But formal defects in procedure or pleading or evidence cannot be taken as ground for appeal in France. The verdict of the jury is practically final. "The judges have no power to grant a new trial. They may grant an appeal to the Court of Cassation. But there is no chance there for the French lawyer to urge technical questions of evidence or procedure. They are not listened to. The appellate court considers only a question of jurisdiction or whether the verdict has been obtained by false or fraudulent testimony or whether it is absolutely wrong and the result of passion and prejudice on the part of the judge and jury. And in point of fact this court (the supreme court of France) very rarely interferes with the verdict and judgment of the Assizes." [1] Nor can there be mistrial because of the failure of the jury to agree; agreement is not necessary. Conviction is by simple majority vote except that when the

[1] *American Law Review*, Vol. XLVII, page 362.

French jury system

vote stands seven to five the three judges may interpose and acquit the defendant — in other words, add their three votes to the votes of the minority. Hallam called the principle of unanimous verdict, which is peculiar to Anglo-American law, a "preposterous relic of barbarism." If the jurors agree, the agreement is often due to indifference or to pressure that approximates compulsion. If they disagree, then the case must be tried again; and when the defense can hope for nothing better than a disagreement, the temptation to secure that result by bribery is particularly strong. French juries are rapidly selected, a circumstance that contrasts favorably with the formidable delays which are so common in the United States. Prospective jurors are not examined as though themselves on trial, nor are they challenged because they have formed opinions. The number of challenges is limited by the fact that the jury must be selected from a panel of thirty-six names. French practice is obviously superior on another point. With the jury of twelve at least two alternates are chosen, and these, sitting through the trial and hearing all the arguments and evidence, may at any time replace a disabled juror. It can never be necessary towards the end of a trial to begin all over again simply because a juror has fallen ill or (as in the second Hyde trial at Kansas City) gone insane.[1]

[1] In the state of Washington the law provides for the selection of alternate jurors.

The state prosecutor belongs to what is known as the "standing magistracy" from the fact that he stands when speaking, while the judges ("seated magistracy") do not. Clad in red silk robes and sitting beside the judges, he cannot easily be distinguished from them. He is indeed appointed in the same way (by virtue of an examination system) and may, in the course of promotion, become a judge just as a judge may become a prosecutor. But since the government is held responsible for the efficient administration of the criminal law, it does not concede him security of tenure. He may be transferred to a less agreeable locality or reduced in grade or removed by presidential decree — that is, by the minister of justice. When a criminal offense is brought to his attention by complaint or rumor, he is expected to make an investigation and determine whether the complaint is well founded. The subsequent proceedings have already been sketched. But it may here be pointed out that in the case of a misdemeanor, when the prosecutor feels that he has gathered sufficient evidence to convict, he may proceed immediately to trial in the District Court without authority from an examining magistrate. This procedure, which resembles prosecution by information in the United States, has the advantage of simplicity. There seems to be a tendency to follow it in doubtful cases. Three fourths of the criminal trials are begun in this way.[1]

The public prosecutor

[1] Chardon, *op. cit.*, page 201.

The prosecutor is also supposed to take an active part in certain civil cases such as those that affect minors, communes, or public institutions; and, under any circumstances, he may interpose after the pleadings and propose a solution to the court.

Central control of police

The police, though constituting another important element in the repression and detection of crime, are under the supervision of the minister of the interior. While their primary function of preserving order relates closely to the administration of justice, yet it must be remembered that the police power has a very wide range in France, embracing such matters as factory inspection, fire prevention, and public health. The control exercised by the minister, through a subordinate known as the director of general security, varies according to the size of the municipality and the class of police officials concerned. He has complete control over the secret service, the detectives who guard the person of the President, keep revolutionary agitators under surveillance, and in the chief ports and railway terminals lie in wait for notorious characters who are to be expelled from the country or otherwise limited in their movements. The *gendarmes* (or state police), however, are regarded as forming part of the army and come mainly under the jurisdiction of the minister of war. This admirable force, led by army officers and for the most part mounted, maintains order in the country

districts and along the highways. It includes nearly twenty-two thousand men who receive twenty dollars a month with free lodging and a small pension after twenty-five years' service. Like the Canadian mounted police and the Pennsylvania and New York constabulary, the *gendarmes* have proved highly effective in dealing with disturbances that the local police cannot handle.

In the three largest cities of France (Paris, Lyons, and Marseilles), in Toulon (fifteenth city in point of size) and La Seyne[1] a special form of police administration has been established, this being due to the fear of insurrection or dangerous and prolonged rioting. In Paris a prefect of police, amenable in no way to the departmental prefect, has autocratic power in the management of the force. He must, it is true, appear before the municipal council to justify his annual budget and answer questions, for the state merely grants a subvention equal to about a third of the cost of maintenance; but should the council refuse appropriations, as it has recently done on several occasions, the minister of the interior may intervene and force it to comply. The system in the other communes is somewhat different. There the departmental prefects manage forces which are maintained by national funds; the

[1] The police of Toulon and La Seyne (both in the department of Var) were nationalized by the law of Nov. 14, 1918.

cities have not even a nominal control over the expenditures, being obliged by law to assist the state with subventions amounting in the case of Lyons to about thirty-five per cent, in the case of Marseilles to about fifty-five per cent.[1] Outside these five communes central control is not very effective. It is true that in cities of more than forty thousand population all details of organization (even as to salaries) are fixed by presidential decree; that in every city of more than five thousand population the police commissioner is appointed (and disciplined or removed) by the central government; and that the municipal councils can be compelled to vote the appropriations asked for. But in regulating police organization and in appointing commissioners the government consults local feeling as manifested by the mayor and council. In practice the mayor's influence over the police is preponderant.[2]

This modified local autonomy, as compared with the centralized judicial administration, has not given good results. Louis Barthou, formerly prime minister, declares "that the municipal police is deplorably organized in France and that there does not exist . . . a serious rural police." [3] "It is a matter of daily observation," says M.

Police inefficient

[1] Toulon and La Seyne are required to contribute to the state the sum of the ordinary expenditure of 1913 and half the additional expenditure.

[2] Chardon, *op. cit.*, page 186.

[3] *Revue hebdomadaire*, 1911, Vol. IV, page 632.

Chardon,[1] "that in almost the whole of France we have really no police." If an abnormal situation arises — a strike, a riot, a concerted resistance to the enforcement of law — anarchy prevails for the time. Robbery, pillage, and murder can occur without the intervention of a policeman. "The civilization of France is at stake." [2] The *gardes champêtres* or police of the rural communes, appointed by the mayor with the approval of the subprefect, are "absolutely inefficient." It is a matter of patronage: some cobbler, carpenter, or farmer is paid a small wage for doing nothing (except at the approach of election time);[3] blind men and paralytics have been appointed.[4] M. Chardon, describing these dismal conditions and observing that a third of all the criminal offenders escape apprehension, declares that the police should everywhere be organized and directed by the state alone. He is astonished that "the laws and ordinances which regulate the conditions of a Frenchman's life can be modified, mutilated, or ignored altogether through the negligence or hostility of the municipalities." [5] These words, written in 1908 shortly before the government took control of the Marseilles police, may have some significance for the

[1] *Op. cit.*, page 174.
[2] *Id.*, page 187.
[3] *Revue des deux mondes*, 1911, Vol. IV, page 633.
[4] Chardon, page 190.
[5] *Op. cit.*, page 206.

future. "I do not conceal the fact that the nationalization of the police is a radical solution," says Louis Barthou. "But I should be surprised if it were not the solution found necessary, perhaps in the near future." [1]

[1] *Revue hebdomadaire*, 1911, Vol. IV, page 634.

APPENDIX I

BIBLIOGRAPHY

MANY changes have taken place in French government since Bodley and Lowell described its structure and its operation more than twenty years ago. Parliamentary procedure, for instance, has been greatly modified; party organization has been quite transformed. In the preparation of this volume the author has attempted to utilize the fairly abundant literature which has appeared recently in France and which, besides dealing with actual changes, has occupied itself with the discussion of projected reforms. No one can pursue the study of French government very far without consulting the French authorities; and in order that the student may satisfy his curiosity on particular points as they arise, it has seemed imperative to furnish in text and footnotes some indication of the materials which have been drawn upon. The following short bibliography supplements the footnotes. It brings together most of the works cited there, as well as others which have not been cited, and groups them under convenient heads for the purposes of systematic reading. For later publications see the bibliographies ap-

pearing in each number of the *American Political Science Review* (quarterly), *La Revue du droit public* (quarterly), and *La Revue politique et parlementaire* (monthly).

A. GENERAL TEXTS

(1) *In English:*

BODLEY, J. E. C. *France* (2 vols., 1898; also 1 vol. ed., 1900). A work of established reputation written by an Englishman who had lived in France for several years and obtained a first-hand acquaintance with her political and social institutions. Its value has, of course, been much impaired by the rapid movement of events in the last two decades. Mr. Bodley, like many Frenchmen of the time, had no faith in the permanence of the Republic and adopted a critical attitude that at times clouded his judgment.

BURGESS, J. W. *Political Science and Comparative Constitutional Law* (2 vols., 1893). The chapters on French government in the second volume, though limited in scope and written so long ago, still command attention because of the admirably lucid presentation.

LOWELL, A. L. *Governments and Parties in Continental Europe* (2 vols., 1896). See Vol. I for France. A suggestive and penetrating analysis by the foremost American authority. Two abridgments have appeared: *The Gov-*

ernments of France, Italy, and Germany (1914) and *Greater European Governments* (1918). Unfortunately, in neither case have the editors brought the subject matter up to date.

OGG, F. A. *The Governments of Europe* (1913). Those who wish to make at the outset a rapid survey of the whole field will find the chapters on French government particularly useful; they are compact (sixty-two pages) and systematic. Extensive bibliographies are given in the footnotes.

POINCARÉ, RAYMOND. *How France is Governed* (translation, 1914). This volume, apparently designed for the use of French school children, is short and rather elementary. The chapters on education, justice, and finance give facts not readily obtainable elsewhere.

(2) *In French:*

DUGUIT, LÉON. *Traité de droit constitutionnel* (2 vols., 1911). This is, with the possible exception of Esmein's *Éléments* the best general treatise. The student should become thoroughly familiar with it or at least with all of the second volume and that part of the first volume which is not occupied with theoretical and philosophical considerations. It is to be regretted that Duguit, like Esmein, gives no attention to the organization and activities of political parties. A revised edition is being prepared.

DUGUIT. *Manuel de droit constitutionnel* (3d ed., 1918). Of equal authority with the above, but less detailed. The new edition discusses the effects of the war on the functioning of the parliamentary system.

ESMEIN, A. *Éléments de droit constitutionnel* (6th ed., edited by Joseph Barthélemy, 1914). Should be used along with Duguit whose conclusions frequently differ from those of the late Professor Esmein.

JÈZE, GASTON. *Éléments de droit public et administratif* (1910). A small book of some three hundred pages, very simple and clear, with emphasis upon general principles.

MOREAU, F. P. L. *Précis élémentaire de droit constitutionnel* (8th ed., 1917). Completely revised. This work, as the numerous editions indicate, is widely used as a textbook.

PIERRE, EUGÈNE. *Traité de droit politique, électoral, et parlementaire* (3d ed., 1908; supplement, 1914). This is a work of reference rather than a textbook. Prepared by the general secretary (or, as we should say, the clerk) of the Chamber of Deputies, it ranks as the standard authority on parliamentary procedure, although it is not confined to that field. The supplement (1431 pages) is arranged in sections corresponding with those of the original text.

The numerous works on administrative law, while mainly concerned with technical questions,

describe the structure of central and local government. See "Berthélemy" and "Hauriou" under "G" of this Appendix.

B. THE CONSTITUTION

For the text of the Constitutional Laws of 1875 and related documents see:

ANDERSON, F. M. *The Constitutions and Other Select Documents Illustrative of the History of France* (2d ed., 1908).

DODD, W. F. *Modern Constitutions* (2 vols., 1909).

DUGUIT ET MONIER. *Les Constitutions et les principales lois politiques de la France depuis 1789* (3d ed., 1915).

The character and content of the constitution are discussed by Duguit and Esmein in the general texts already noticed. On special aspects see:

AUFFRAY, JEAN. *Étude sur la facilité de la revision de notre constitution de 1875* (1908).

DESFOUGÈRES, HENRI. *La Contrôle judiciaire de la constitutionnalité des lois* (1913).

SALEILLES, R. "*The Development of the Present Constitution of France*," *Annals of the American Academy of Political and Social Science*, July, 1895.

SANTONI, A. *De la distinction des lois constitutionnelles et des lois ordinaires* (1913).

C. POLITICAL DEVELOPMENT

(1) *In English:*

BODLEY, J. E. C. *France, History,* in Vol. X of the *Encyclopædia Britannica* (11th ed., 1910), pages 873–904. An excellent review of the period from 1870. Somewhat cynical in dealing with party conflicts, but free from the strong partisan bias which colors most of the contemporary histories.

—— *The Church in France* (1906).

BRACQ, J. C. *France under the Republic* (1910).

CAMBRIDGE MODERN HISTORY, Vol. XII, *The Latest Age* (1910).

COUBERTIN, PIERRE DE. *The Evolution of France under the Third Republic* (1897).

DAWBARN, CHARLES. *Makers of New France* (1915). Biographical sketches of eminent Frenchmen, including Raymond Poincaré, Georges Clemenceau, Aristide Briand, Théophile Delcassé, Louis Barthou, and the late Jean Jaurès.

DIMNET, ERNEST. *France Herself Again* (1914). Drawing evidence from many phases of the national life — from politics, education, literature, journalism, Dimnet seeks to show that, with the adoption of the Constitution of 1875, France entered upon a period of progressive decline and that she was rescued from this decadence by the shock of German

aggressions. His sympathies are with the Church and the army. A striking plea for conservative and patriotic ideals.

ESTEY, J. A. *Revolutionary Syndicalism* (1913). Treats of a recent phase of social unrest which had important political effects.

GUÉRARD, A.-L. *French Civilization in the Nineteenth Century* (1914). This is not a mere compilation. Professor Guérard shows a rare originality and analytical power in the interpretation of his facts.

HANOTAUX, GABRIEL. *Contemporary France* (4 vols., translation of *Histoire de la France Contemporaine*, 1903–1909). Confined to the first twelve years of the Republic.

HYNDMAN, H. M. *Clemenceau* (1919). Valuable not only as a study of the eminent Radical statesman, but also as a commentary on phases of the political history of the Republican period.

LEVINE, LOUIS. *The Labor Movement in France* (1912).

VIZETELLY, E. A. *Republican France* (1913). By an English journalist who fought in the war of 1870, gave Zola sanctuary in England during the height of the Dreyfus affair, and who had a first-hand acquaintance with politics and politicians. A lively book, full of anecdote and reminiscence. Covers the period 1870–1912.

WRIGHT, C. H. C. *A History of the Third French*

Republic (1916). A well-written, well-balanced narrative of only 200 pages.

(2) *In French:*

BERTRAND, A. *Les Origines de la Troisième République, 1871–1876* (1911).

DEBIDOUR, A. *L'Église catholique et l'état sous la troisième République* (2 vols., 1909).

DESPAGNET, F. *La République et le Vatican, 1876–1906* (1906).

HOSOTTE, LOUIS. *Histoire de la Troisième République* (Vol. I, 1870–1909; Vol. II, 1909–1912). Favorable to the church.

MARÉCHAL, E. *Histoire contemporaine de 1879 à nos jours* (3 vols., 1900).

WEILL, G. *Histoire du mouvement social en France*, 1852–1910 (2d ed., 1912).

ZEVORT, E. *Histoire de la troisième République* (4 vols., 1896–1901).

(3) *Year Books and Periodicals:*

For a summary review of each year's political events see in English the *American Year Book* (since 1910), the *Annual Register*, and the *Political Science Quarterly* (*Record of Political Events*); and in French the *Annuaire du Parlement* (since 1898), *L'Année politique* (1875–1905), and *La Vie politique dans les deux mondes* (since 1906). A brief chronicle appears each month in *La Revue politique et parlementaire* (since 1894) and quarterly in *La Revue du droit public* (since

1894). In the former, and at greater length in *La Revue générale d'administration* (published monthly by the ministry of the interior since 1877), appear abstracts of laws, decrees, circulars, and other official documents. For transactions in Parliament see *Le Journal officiel de la République française*. The *Almanach National* gives the personnel of the cabinet, the chambers, the administrative bureaux, the law courts, etc.

D. PARTIES

The party system is described by Bodley and Lowell (in the works already noticed under "A" of this appendix) and more briefly by Charles Seignobos in the *International Monthly* (August, 1901, pages 139–165). The latter contends that Bodley and Lowell, examining French parties from the standpoint of English and American experience, failed to grasp their inward character and regarded them simply as a "monstrous vagary." Since his article was written, however, the parties have passed through something like a metamorphosis. We are now almost entirely dependent upon French books and periodicals for our information. There is, fortunately, one recent systematic treatise: Jacques, *Les Partis politiques sous la troisième République* (1913). This describes the history, policies, organization, and tactics of the existing parties and in an appendix gives *in extenso* the platforms and rules.

CHARPENTIER, ARMAND. *Le Parti radical et radical-socialiste à travers ses congrès, 1901–1911* (1913). This is a documented work of high value.

ESTEY, J. A. *Revolutionary Syndicalism* (1913).

GUÉRARD, A.-L. *French Civilization in the Nineteenth Century* (1914). See especially Chapter IV on the evolution of Socialism and Syndicalism.

JACQUES, LÉON. *Les Partis politiques sous la troisième République* (1913). A systematic and scholarly work which covers the whole field. Disappointing on the historical side.

LANESSAN, J.-L. DE. *La Crise de la République* (1914). An argument for the two-party system. The author makes concrete proposals which are based upon analysis of prevailing conditions. He hopes to see the numerous parties consolidate into two organizations — the "authoritarian" Left and the "liberal" Right, the latter seeking to protect personal liberty and property rights.

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MAC GIBBON, D. A. "*French Socialism Today*," *Journal of Political Economy*, Vol. XIX, pages 36–46 and 98–110.

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series of articles describing all the parties of today except the Socialist-Republican party which was organized later. For the titles of these articles see the footnotes to Chapter X.

WEILL, G. *Histoire du mouvement social en France de 1852 à 1910* (2d ed. 1912).

E. THE PRESIDENT

BARTHÉLEMY, JOSEPH. *Le Rôle du pouvoir exécutif dans les républiques modernes* (1906). Barthélemy gives a clear and sound statement of the President's position as titular executive.

BOMPARD, R. *Le Véto du Président de la République* (1906).

GARNER, J. W. "*The Presidency of the French Republic*," *North American Review*, March, 1913, pages 334–349. Best description of the presidency in English.

LAFERRIÈRE, J. "*Le Contreseing ministériel*," *Revue générale d'administration*, April and May, 1908.

LEYRET, HENRI. *Le Président de la République* (1912). Critical examination of the presidential powers. Leyret maintains that the President has the means of freeing himself from his present abject dependence upon the ministers and of exerting real initiative.

LUBERSAC, G. DE. *Les Pouvoirs constitutionnels du Président de la République* (1911).

MATTER, P. *De la Dissolution des assemblées parlementaires* (1898). A highly controversial subject that deserves careful study.

MOREAU, F. P. L. *Le Règlement administratif* (1902). Legislative powers of the President.

NADAL, J. *Attributions du Président de la République en France et aux États Unis* (1909).

F. THE MINISTERS

Most of the books recommended under "E" and "G" of this Appendix consider the relations of the ministers either to the President or to the civil service.

GARNER, J. W. "*Cabinet Government in France*," *American Political Science Review*, Vol. VIII, pages 353–374. A valuable article which cites a great number of French authorities.

NOËLL, H. *L'Administration de la France: les ministères, leur organisation, leur rôle* (1911).

For the personnel of the numerous cabinets see *Publication de la société d'histoire moderne: les ministères français, 1789–1909* (1910) and *Annuaire du Parlement*, Vol. X, which gives the cabinets from 1900 to 1913.

G. ADMINISTRATION

ASHLEY, P. W. L. *Local and Central Government* (1906). Concerned mainly with the rela-

tions between central and local authorities in France, England, and Germany.

BERTHÉLEMY, H. *Traité élémentaire de droit administratif* (7th ed., 1913). In Berthélemy and Hauriou (see below) the student will find a good general description of administrative machinery.

BLOCK, M. *Dictionnaire de l'administration française* (2 vols., 5th ed., 1905; supplement, 1907).

CAHEN, GEORGES. *Les Fonctionnaires: leur action corporative* (1911). Perhaps the best account of the unionizing of the government employees, the demands formulated by them (as to appointments, promotion, salary), their resort to the strike, and the agitation for a national civil-service law.

CHARDON, HENRI. *Les Travaux publics* (1904). Highways, railroads, etc.

—— *L'Administration de la France: les fonctionnaires* (1908). Devoted mainly to the administration of justice.

—— *Le Pouvoir administratif: la réorganisation des services publiques* (1911). A collection of essays and lectures written during the previous decade.

GARNER, J. W. *Administrative Reform in France* (*American Political Science Review*, Vol. XIII, pages 17–46).

GEORGIN, CHARLES. *Le Statut des fonctionnaires* (1912).

HENNESSEY, JEAN. *La Réorganisation administrative de la France* (1919). Favors decentralization.

HAURIOU, MAURICE. *Précis de droit administratif* (8th ed., 1914; and 9th ed., 1919).

HUGUES, P. D'. *La Guerre des fonctionnaires* (1914). Efforts of the organized civil servants to extort concessions from the government.

LEFAS, A. *L'État et les fonctionnaires* (1913). Deals with the grievances of public officials, their organization to secure reforms, and especially the action of Parliament upon civil-service bills. An exhaustive bibliography is given in the appendix.

NOËLL, H. *L'Administration de la France: les ministères, leur organisation, leur rôle* (1911). The only systematic treatise on the organization of the central departments.

Revue hebdomadaire: March-June, 1911. A series of articles by Jules Méline, Louis Barthou, Étienne Flandin, and others describing the twelve ministerial departments of that time.

SAILLARD, A. *Le ministère des finances* (1903).

H. ADMINISTRATIVE LAW AND ADMINISTRATIVE COURTS

BERTHÉLEMY, H. *Traité élémentaire de droit administratif* (7th ed., 1913).

BRUGÈRE, R. *Conseil d'État: son personnel, évolution, tendances* (1910). Most detailed description of the highest administrative court.

CHARDON, H. *L'Administration de la France: les fonctionnaires* (1908), pages 385–407.

COMBARIEU, A. *Traité de procédure administrative devant les conseils de préfecture.*

DICEY, A. V. *The Law of the Constitution* (8th ed. 1915). Chapter XII gives a clear statement of the outstanding features of French administrative law.

DUGUIT, LÉON. "*The French Administrative Courts*," *Political Science Quarterly*, Vol. XXIX, pages 385–407.

GARNER, J. W. "*Judicial Control of Administrative and Legislative Acts in France*," *American Political Science Review*, Vol. IX, pages 637–665.

GOODNOW, FRANK J. *Comparative Administrative Law* (2 vols., 1893).

HAURIOU, M. *Précis de droit administratif* (8th ed., 1914; and 9th ed., 1919).

KELLERSOHN, M. *Des Effets de l'annullation pour excès de pouvoir* (1915).

ROLLAND, L. "*Le Conseil d'État et les règlements d'administration publique*," *Revue du droit public*, April-June, 1911.

I. THE ORDINARY COURTS

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APPENDIX II

PRIME MINISTERS OF FRANCE UNDER THE CONSTITUTION OF 1875[1]

PRESIDENCY OF MARSHAL MACMAHON

March 9, 1876	Jules Dufaure
Dec. 12, 1876.	Jules Simon
May 17, 1877.	Duc de Broglie
Nov. 23, 1877.	General de Rochebouët
Dec. 13, 1877.	Jules Dufaure

PRESIDENCY OF JULES GRÉVY

Feb. 4, 1879.	William Henry Waddington
Dec. 28, 1879.	Charles de Freycinet
Sept. 23, 1880.	Jules Ferry
Nov. 14, 1881.	Léon Gambetta
Jan. 30, 1882.	Charles de Freycinet
Aug. 7, 1882.	Eugène Duclerc
Jan. 29, 1883.	Armand Fallières
Feb. 21, 1883.	Jules Ferry
April 6, 1885.	Henri Brisson
Jan. 7, 1886.	Charles de Freycinet
Dec. 11, 1886.	René Goblet
May 30, 1887.	Maurice Rouvier

[1] For the personnel of the cabinets see: *Publication de la société d'histoire moderne: les ministères français 1789–1909* (1910); *Annuaire du Parlement*, Vol. VII (cabinets from 1871 to 1908) and Vol. X (cabinets from 1900 to 1913).

PRESIDENCY OF SADI CARNOT

Dec. 12, 1887.	Pierre Emmanuel Tirard
April 3, 1888.	Charles Floquet
Feb. 22, 1889.	Pierre Emmanuel Tirard
Mar. 17, 1890.	Charles de Freycinet
Feb. 27, 1892.	Émile Loubet
Dec. 6, 1892.	Alexandre Ribot
Jan. 11, 1893.	Alexandre Ribot
April 4, 1893.	Charles Dupuy
Dec. 3, 1893.	Jean Casimir-Périer
May 30, 1894.	Charles Dupuy

PRESIDENCY OF JEAN CASIMIR-PÉRIER

July 1, 1894.	Charles Dupuy

PRESIDENCY OF FÉLIX FAURE

Jan. 26, 1895.	Alexandre Ribot
Nov. 1, 1895.	Léon Bourgeois
April 29, 1896.	Jules Méline
June 28, 1898.	Henri Brisson
Nov. 1, 1898.	Charles Dupuy

PRESIDENCY OF ÉMILE LOUBET

Feb. 18, 1899.	Charles Dupuy
June 22, 1899.	René Waldeck-Rousseau
June 7, 1902.	Émile Combes
Jan. 24, 1905.	Maurice Rouvier

APPENDIX II

PRESIDENCY OF ARMAND FALLIÈRES

Feb. 18, 1906.	Maurice Rouvier
Mar. 14, 1906.	Ferdinand Sarrien
Oct. 25, 1906.	Georges Clemenceau
July 23, 1909.	Aristide Briand
Mar. 2, 1911.	Ernest Monis
July 27, 1911.	Joseph Caillaux
Jan. 13, 1912.	Raymond Poincaré
Jan. 21, 1913.	Aristide Briand

PRESIDENCY OF RAYMOND POINCARÉ

Feb. 18, 1913.	Aristide Briand
Mar. 21, 1913.	Louis Barthou
Dec. 2, 1913.	Gaston Doumergue
June 9, 1914.	Alexandre Ribot
June 13, 1914.	René Viviani
Aug. 26, 1914.	René Viviani
Oct. 29, 1915.	Aristide Briand
Mar. 19, 1917.	Alexandre Ribot
Sept. 10, 1917.	Paul Painlevé
Nov. 15, 1917.	Georges Clemenceau
Jan. 20, 1920.	Alexandre Millerand

PRESIDENCY OF PAUL DESCHANEL

Feb. 18, 1920.	Alexandre Millerand

APPENDIX III

ACT TO AMEND THE ORGANIC LAWS ON ELECTION OF DEPUTIES AND TO ESTABLISH scrutin de liste WITH PROPORTIONAL REPRESENTATION

Promulgated 12 July, 1919

1. Members of the Chamber of Deputies shall be elected by departmental general ticket.

2. Each department shall elect one deputy for every 75,000 inhabitants of French nationality, a remainder exceeding 37,500 giving the right to an additional deputy.

Each department shall elect at least three deputies.

Provisionally and until a new census has been taken each department shall have the same number of seats [in the Chamber of Deputies] as at present.

3. Each department shall form a single electoral area. Provided that when the number of deputies to be elected by a department is greater than six the department may be divided into electoral areas each of which shall be entitled to elect at least three deputies. Such division shall be enacted by law.

Notwithstanding the foregoing provision the departments of the Nord, the Pas de Calais, the

Aisne, the Somme, the Marne, the Ardennes, the Meurthe-et-Moselle and the Vosges shall not be divided for the next election.

4. No person can be a candidate in more than one electoral area, and the law of 17 July, 1889, relating to multiple candidatures shall apply to elections under this Act; declarations of candidature may nevertheless be either individual or collective.

5. Lists are constituted for any particular electoral area by groups of candidates who sign a legally authenticated declaration.

Declarations of candidature shall indicate the order in which candidates are presented.

If the declarations of candidature are presented on separate sheets they must specify the candidates in conjunction with whom the signatory or signatories stand and who agree by joint and duly authenticated declaration to put the names of the signatories on the same list as their own.

A list shall not include a number of candidates greater than the number of deputies to be elected in the electoral area. An individual candidature shall be considered as forming a separate list. In such case the declaration of candidature shall be supported by one hundred electors of the electoral area, whose signatures shall be authenticated and shall not be used in support of more than one candidature.

6. The lists shall be deposited at the prefecture after the commencement of the electoral

period and at latest five days before the day of the election.

The list and the title of the list shall be registered by the prefecture.

Registration shall be refused to any list bearing more names than there are deputies to elect or bearing the name of any candidate belonging to another list already registered in the electoral area unless such candidate has previously withdrawn his name in accordance with the procedure laid down in Article Seven.

Registration shall be accorded only to the names of candidates who have made a declaration in conformity with the terms of Articles Four and Five.

A provisional acknowledgment of the deposit of a list shall be given to each of the candidates who compose it.

The definite receipt shall be delivered within the next twenty-four hours.

7. A candidate inscribed upon a list cannot be struck off unless he notifies the prefecture of his desire to withdraw by statutory declaration (*par exploit d'huissier*) five days before the day of the election.

8. Vacancies on any list may be filled at latest five days before the day of the election by the names of new candidates who make the declaration of candidature prescribed by Article Five.

9. Two days before the commencement of the poll the prefectoral authorities shall cause the

registered candidatures to be posted on the doors of the polling-places.

10. Any candidate who obtains an absolute majority shall be declared elected provided that the number of seats to be filled is not exceeded.[1] Any seats that remain to be filled shall be allotted in accordance with the following procedure:

The *electoral quota* shall be determined by dividing the number of voters (excluding blank or spoiled ballots) by the number of deputies to be elected.

The *average* for each list shall be determined by dividing by the number of its candidates the total number of votes which they have obtained.

[1] The proviso contained in the last words of this paragraph becomes necessary owing to the fact that each voter has as many votes as there are deputies to be elected, and that cross-voting (*panachage*) is permitted. Thus the following might be the result of an election of five deputies by 10,000 voters. The absolute majority is 5001. Two lists are presented with candidates A, B, C, D, E, and P, Q, R, S, T, respectively, and the voting is as shown:

10,000 voters (by groups)	Votes received by candidates									
	A	B	C	D	E	P	Q	R	S	T
Group of 4900	4900	4900	4900	4900	4900	—	—	—	—	—
" 100	100	100	100	100	—	40	30	20	10	—
" 4600	—	—	—	—	—	4600	4600	4600	4600	4600
" 400	100	80	60	40	120	400	400	400	400	—
Totals..10,000	5100	5080	5060	5040	5020	5040	5030	5020	5010	4600

Thus nine candidates out of ten can, if there is cross-voting, receive an "absolute majority," even though there are only five seats to distribute.

To each list shall be allotted a number of seats equal to the number of times which its average contains the electoral quota.

The remaining seats, if any, shall be allotted to the list with the highest average.

Within each list the seats obtained shall be allotted to the candidates who have received most votes.

11. An independent candidate, provided that he has not obtained an absolute majority of the votes, shall not be eligible for allotment of a seat until the candidates belonging to other lists who have obtained more votes than he has obtained shall have been declared elected.

12. In case of equality of votes the eldest candidate shall be elected.

If more lists than one have an equal title to a seat, the seat is allotted to that one of the candidates eligible who has received most votes or, in case of equality of votes, to the eldest candidate. A candidate shall not be declared elected unless the number of votes obtained by him exceeds half the average of the votes of the list to which he belongs.

13. When the number of voters is not greater than half the number of registered electors or if no list has obtained the electoral quota, no candidate shall be declared elected, and the electors of the area shall be summoned to a new election two weeks later. If at this new election no list obtains the electoral quota, the seats shall be

assigned to the candidates who have received most votes.

14. The reports on the proceedings at the election in each commune shall be prepared in duplicate. One copy shall be deposited at the secretariat of the town hall; the other shall be at once posted under sealed cover addressed to the prefect for transmission to the canvassing board.

15. The votes shall be counted for each electoral area at the chief town of the department in public session at latest on the Wednesday following the day of the poll. The operation shall be performed by a board composed of the president of the district court (as chairman) and the four members of the general council, not being candidates at the election, who have longest held office. In case of equal length of office the eldest shall be appointed.

If the president of the district court is unable to serve, his place shall be filled by the vice-president and failing him by the senior judge. In case of inability to serve the places of the members of the general council shall be filled by other members of the same body in order of seniority.

The operations of the count shall be recorded in a report.

16. In case of a vacancy through death, resignation, or otherwise an election shall take place within a period of three months counting from the day on which the vacancy took place.

17. Vacancies occurring within the six months

preceding the next general election of the Chamber shall not be filled.

18. The present Act shall apply to the departments of Algeria and to the colonies which shall retain their present number of deputies.

Further legislation shall make provision for the application of the present Act to the territory of Belfort and for the organization of Alsace and Lorraine.

19. Any previous legislation conflicting with the present Act is hereby repealed.

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